

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE LARRY R. HICKS, SENIOR DISTRICT JUDGE
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5 ORACLE USA, INC., et al, :
6 Plaintiffs, : No. 2:10-cv-0106-LRH-VCF
7 -vs- : September 22, 2021
8 RIMINI STREET, INC., et al, : Reno, Nevada
9 Defendants. : Volume 3
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TRANSCRIPT OF EVIDENTIARY HEARING

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1 RENO, NEVADA, WEDNESDAY, SEPTEMBER 22, 2021, 9:00 A.M.

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4 THE COURT: Good morning. Have a seat, please.

5 All right. The record will show that we are
6 reconvened on Wednesday morning, September 22nd, and prepared
7 for the continued cross-examination of Ms. Frederiksen-Cross.

8 Mr. Vandavelde?

9 MR. VANDEVELDE: Yes, your Honor. If we could
10 have the witness approach, please.

11 Good morning, Ms. Frederiksen-Cross.

12 THE WITNESS: Good morning.

13 BARBARA FREDERIKSEN-CROSS,
14 recalled as a witness on behalf of the Plaintiff,
15 previously sworn, testified further as follows:

16 CROSS-EXAMINATION RESUMED

17 BY MR. VANDEVELDE:

18 Q And just a quick housekeeping matter, we replaced one of
19 the binders you had yesterday. There's new three volumes for
20 you. One is on your desk in front of as you, and two are
21 below you. So if I refer to tab numbers, that's where they
22 are.

23 And let's dive right in. Yesterday, when we
24 concluded, we were talking about Issue 3 involving an update
25 to a W2 form relating to Johnson Controls.

Do you remember that?

1 A I do, yes.

2 Q And it was your opinion that it was cross-use because
3 City of Eugene's software was used, and your opinion was that
4 it was used in the provision of the update to Johnson
5 Controls?

6 A Yes, specifically the configuration update.

7 Q Understood. So are you withdrawing your opinion from
8 yesterday that the sending of the Adobe .pdf file was
9 cross-use?

10 A I think we talked about that, and I think that would
11 depend whether that Adobe file had been edited using the
12 native Adobe environment, or whether it was edited using the
13 business intelligence, the Oracle component that can be used
14 to create pdfs. So, I'm not certain how that .pdf was
15 created.

16 And I think where we left it is it could be, but it
17 depended on the specifics of what went on, and I wasn't able
18 to discern that from the communications.

19 Q So you're not offering an opinion that that was cross-use
20 then?

21 A The .pdf itself?

22 Q Yeah.

23 A I can't be certain that it was.

24 Q You're also not offering an opinion on whether City of
25 Eugene was affected by this W2 issue, are you?

1 A That is correct.

2 Q And City of Eugene is in Oregon, obviously, correct?

3 A Yes.

4 Q Your home state, which is in the U.S., correct?

5 A Correct.

6 Q And this is a W2 federal IRS form, correct?

7 A Correct.

8 Q So you would expect City of Eugene to have U.S.

9 employees, correct?

10 A Oh, certainly.

11 Q And so then therefore City of Eugene would have to issue
12 W2 forms to its employees every year?

13 A Not disputed; I hope they do.

14 Q And you don't offer any opinion that City of Eugene ever
15 said it didn't need or want the update, correct?

16 A No. The issue is whether they would actually need the
17 update, and that would depend on how they define some of the
18 descriptions that they were using, but, I'm sure that they
19 would want the 1099 form with the current year on it.

20 Q And you're not offering an opinion on whether they needed
21 or wanted the update, correct?

22 A That's correct.

23 Q If City of Eugene and Johnson Controls are both affected
24 by the W2 issue, the misalignment we saw, do you have an
25 opinion on which client Rimini is required to start its work

1 in?

2 A No.

3 Q They can start in either one, right?

4 A Presumably, yes.

5 Q And if they have 20 clients who are affected by the same
6 W2 issue we see in Issue 3, Rimini could start in any one of
7 those 20 clients' environments, correct?

8 A Seems reasonable.

9 Q And so it doesn't matter whether, of those 20 clients,
10 one of them may reach out to Rimini and say we need this W2
11 update first?

12 A Yeah. The issue here was specifically the way that
13 certain fields were being printed for some clients in the W2.

14 But I would assume that if multiple of those clients
15 reached out, there would be no constraint on which one they
16 started the work for.

17 Q Yeah. And if Rimini knew that a client would be affected
18 because they're in the United States and they issue W2s, even
19 if that client didn't reach out to Rimini to say, hey, we need
20 the new update form -- the new W2 update, Rimini, based on its
21 prior experience, could know that that client would be
22 affected by it, right?

23 A I want to make a clarification on the specific change
24 we're talking about here because they had already shipped --
25 you know, the correspondence shows they had already shipped

1 the updated -- that year's W2 to clients, and that some
2 clients, specifically Johnson in this case, had stepped up and
3 said, hey, we're having a problem printing.

4 And then the rest of the correspondence seem to
5 indicate that that had to do with the way that they were
6 providing some of the descriptions that were related to that
7 field and the way their system was specifically configured.

8 So you seem to be implying that all clients would
9 necessarily need the update because they had to have the 2018
10 form, and that's not my understanding of this problem at all,
11 it was those clients who were specifically affected by the
12 alignment issue because of the configuration of their systems
13 or the way that they chose to describe certain things that
14 went into box 14.

15 Q You would agree that Rimini works in its clients'
16 environments, right, and gains experience doing so?

17 A I don't know if they gained the kind of experience about
18 the way clients describe the things that they're putting on
19 their W2s, but I'm sure they gain some experience of their
20 clients.

21 Q So you would agree that a Rimini engineer, based on their
22 prior experience, may know that another client will be
23 affected by this W2 issue, correct?

24 A Conceivably that could be true.

25 Q Okay. So if the Rimini engineer knows another client

1 like Johnson Controls will be affected by the W2 issue, are
2 you saying that the Rimini engineer can't proactively fix the
3 issue that he or she knows the client will be affected by?

4 A That's not the position I'm taking, counsel.

5 Q Okay. So let me unpack it.

6 Can the Rimini engineer, if they know the client
7 will be affected by the issue, proactively solve the problem
8 for that client?

9 A Well, in the case we have here there's no evidence
10 that City of Eugene was experiencing the problem, but
11 their environment was used to confirm a solution for the
12 configuration that was used subsequently and provided to
13 Johnson Controls.

14 And so I don't think that the facts in this
15 situation are fitting the hypothetical you're posing to me.

16 Q You previously testified, just this morning, that you
17 were not offering an opinion on whether City of Eugene needed
18 or was affected by an environment, correct?

19 A Yes, but I'm offering the observation that I see no
20 evidence that they were.

21 Q Okay. But they're in the United States, right?

22 A Sure.

23 Q Right. And they have Oregon employees, right?

24 A Yeah, they do.

25 Q Okay. I'd like to publish a demonstrative to use with

1 this witness that will help in communicating my questions on
2 issue number 3.

3 John, can you, please, unless there's an objection,
4 I would like to publish tab 20 of the cross-examination
5 binder. It's purely going to be used as a demonstrative.

6 THE COURT: You may do so.

7 BY MR. VANDEVELDE:

8 Q Ms. Frederiksen-Cross, do you see the demonstrative in
9 front of you?

10 A I do.

11 Q And there are three kind of larger gray boxes. One
12 represents the City of Eugene environment. Do you see that?

13 A I see that.

14 Q And one represents Johnson Controls.

15 A I see that.

16 Q And one represents Rimini.

17 A I see that.

18 Q And there are some red -- some files with some red lines
19 in them, and that's just designed to represent that City of
20 Eugene and Johnson Controls both have Oracle PeopleSoft files.
21 Do you see that?

22 A I see that.

23 Q So you understand what that means. It just represents
24 that they have PeopleSoft environments on their systems,
25 correct?

1 A Okay. I'll accept your representation of that.

2 Q Okay. Do you not think they have PeopleSoft environments
3 on their systems?

4 A No, I'm just saying that's what you're explaining the red
5 boxes to mean, so thank you for that explanation.

6 Q Sure. And there's no PeopleSoft environment on Rimini's
7 systems. We established that yesterday, correct?

8 A That's correct.

9 Q And then there's a representation in the Rimini box and
10 the City of Eugene box that represents just the IRS W2 form.
11 Do you see that?

12 A I see that.

13 Q Okay. And that is going to represent the .pdf we were
14 talking about yesterday and then this morning, do you
15 understand that?

16 A The one that they were editing in the course of that
17 e-mail.

18 Q Correct.

19 A Yes.

20 Q Correct.

21 Now, as to the .pdf form, you're not offering any
22 opinions on the contents of that file, correct?

23 A That the .pdf itself specifically was at issue, no, I'm
24 not offering that opinion.

25 Q And no opinion, then, that it contains any protectible or

1 nonprotectible Oracle expression then, correct?

2 A That's correct, that the .pdf itself does not.

3 Q Now, assume City of Eugene is affected by this W2 problem
4 and needs this update, and assume that Rimini modified the W2
5 .pdf on its own computers to shrink the font size in the .pdf,
6 and then sent the file to the City of Eugene.

7 Do you understand?

8 A So you're talking about the initial problem, the box 14
9 problem.

10 Q Yes.

11 A Okay. For the box 14 problem, I understand that that's
12 where you're at.

13 Q Okay. And then assume Rimini sends the W2 .pdf form to
14 City of Eugene. Are you with me?

15 A I'm with you so far.

16 Q Okay. And then assume Rimini tests in City of Eugene's
17 environment. Are you with me?

18 A The font size problem for box 14, yes.

19 Q Okay. And assume Rimini determines it's a success, it
20 works.

21 A Okay.

22 Q That reducing the font size in that .pdf for box 14
23 solved the issue, at least for that box. Are you with me?

24 A I'm with you so far.

25 Q Okay. Is sending that file to City of Eugene cross-use

1 in your opinion?

2 A Sending the file to -- from Rimini to City of Eugene?

3 Q Yeah.

4 A For the .pdf file? I don't think so, no. I mean, in the
5 facts that you've posed -- or proposed.

6 Q Okay. Now assume that based on its experience and
7 knowledge of that successful test for City of Eugene, Rimini
8 sends this W2 form to Johnson Controls. Are you with me?

9 A So far.

10 Q Are you offering an opinion that Rimini sending that W2
11 form to Johnson Controls is cross-use?

12 A I don't think that it would be necessarily. I mean, they
13 are using some of the knowledge they gained in City of Eugene.

14 The act of sending the file, of the .pdf file, I
15 would not expect to be cross-use, or, to the extent that it
16 was, it would likely be an allowable form of cross-use.

17 Q So there are allowable forms of cross-use?

18 A I don't dispute that there could be. I think that's up
19 to the judge to decide.

20 Q So we're here in a contempt proceeding about what
21 cross-use means, and you say there are allowable forms of
22 cross-use and nonallowable forms of cross-use? Where's the
23 line?

24 A Okay. I would characterize this as cross-use in the
25 sense they are using -- it's not the act of sending the .pdf

1 but the act of reusing the knowledge of the solution, and
2 assuming that they could send that without further work to
3 other clients.

4 But whether that was allowable or not I think is not
5 my decision to make.

6 Q I know it's not your decision, but I'm asking for your
7 opinion. Do you think Rimini sending this W2 form to Johnson
8 Controls -- yes, using the knowledge that it worked for City
9 of Eugene -- that that's cross-use?

10 A They have cross-used the testing that they did in the
11 City of Eugene in their assumption that this is a fix for all
12 clients. But the provision of the form specifically I don't
13 see as cross-use.

14 So there's two separate issues in my mind, the
15 provision of the form, and then the knowledge that underlies
16 the need to provide that form for the --

17 Q So, you just --

18 A -- desirability of providing that form to other clients.

19 Q So this is knowledge cross-use, then.

20 A In this specific instance, it's the reuse of the results
21 of testing a solution in one client's environment for the
22 benefit of other clients, but the .pdf itself I think is not
23 the issue.

24 Q We'll get to print parameters in a second.

25 There was no file sent between City of Eugene or

1 Johnson Controls, right?

2 A Not that I'm aware of here.

3 Q And when you said test results, there was no test results
4 in the form of documents sent that you saw, right?

5 A No. It was the reuse of the environment to diagnose the
6 problem and to develop a solution for the problem.

7 Q And then reusing that knowledge that it worked for
8 Johnson Controls, that's your opinion.

9 A Reusing the specific -- the specific knowledge of the
10 specific solution of what, for instance, the settings within
11 the recipient environment should be to be able to print
12 properly within that form --

13 Q We'll get to the print parameters --

14 A -- the reuse --

15 Q We'll get to the print parameters. I'm just talking
16 about the IRS W2 form for now.

17 Are you saying that Rimini's knowledge that the W2
18 form worked in City of Eugene, that Rimini cannot use that
19 knowledge for Johnson Controls?

20 A I think in the first case where we're confined just to
21 the knowledge that's related to box 14, that is to say, the
22 changing of the font size of the W2 itself and making that
23 change in the W2, would not be.

24 Q Okay. So now you're saying it's not cross-use, there's
25 no knowledge cross-use. Is that what you're saying?

1 A Well, they are certainly reusing their knowledge of the
2 testing.

3 Q So is that cross-use? That's what I'm trying to get at.

4 Is it cross-use or not to use the knowledge from the
5 successful test?

6 A This particular instance is a bit of a corner case
7 because the knowledge that they are reusing is not specific
8 knowledge related necessarily to the PeopleSoft environment
9 and a specific PeopleSoft issue but, rather, a more general
10 printing issue.

11 And so it's a bit of an on-the-bump case for me
12 because it's something that's -- you know, we're not accusing
13 specifically the shipping of the -- or my understanding is
14 that it's not Oracle's position that the shipping of the .pdf
15 in and of itself constitutes cross-use.

16 Now, you've shifted that to the testing in the
17 environment at the City of Eugene, and there it's my
18 understanding that the Court has identified testing in one
19 customer's environment that is then used to the benefit of
20 other customers as something that is inappropriate.

21 Q You believe the Court has said that using knowledge of
22 testing results is inappropriate for other clients? Is that
23 your testimony?

24 A No, no. The use of the customer's environment to conduct
25 development and testing that then is used -- and probable

1 diagnosis -- that is then used on behalf of another customer.

2 Q Well --

3 A And as I mentioned in this case, in the actual facts of
4 the evidence of this case, there is nothing I have seen that
5 indicates City of Eugene had that problem.

6 You know, if City of Eugene had had the problem and
7 it was developed there, that would be a different scenario
8 than a situation where another customer like Johnson has a
9 problem, and that they are then using City of Eugene's
10 environment where there's no evidence the problem exists to
11 bring up information to help that other customer try to
12 circumvent the problem.

13 Q But, again, you're not offering an opinion on whether
14 City of Eugene had the problem or was affected by the problem,
15 correct?

16 A I have seen no evidence that they did, but I don't have
17 specific knowledge one way or the other, counsel.

18 Q Okay. Now, you said -- I think you said corner case or a
19 bubble case. The Court set this issue for this hearing,
20 correct?

21 A My understanding was that it was setting the issue with
22 respect to the use of the Eugene environment, not in the
23 context specifically of this .pdf, but in the context of the
24 other fix that was provided to Johnson based on the use of the
25 City of Eugene's environment.

1 Q And we'll get to the print parameters, I promise, but I'm
2 just asking as to the provision of this, I'm trying to get a
3 clear answer, is it cross-use for Rimini to use its
4 knowledge -- yes, by using City of Eugene's environment, it
5 used City of Eugene's environment to determine that this W2
6 form modified worked, and then it uses that knowledge that it
7 worked and said, hey, I'm going to give this same IRS form to
8 Johnson Controls.

9 Is the reuse of that knowledge, yes, by using City
10 of Eugene's environment, is that unlawful cross-use in your
11 opinion?

12 A Because I lack the knowledge of the specific way in which
13 Rimini modified that form, whether or not they used the
14 PeopleSoft environment to create the modification for that
15 form, and exactly how this particular form fix came into
16 being, I am not offering that opinion because I don't have
17 sufficient information to know for certain --

18 Q So you're --

19 A -- with respect to the actual facts of what happened with
20 that W2 form.

21 Now, you've posed a hypothetical here, and it's a
22 hypothetical that, in my consideration of whether or not
23 providing a form was an act of cross-use, I rejected because I
24 have insufficient information in the actual instance to
25 evaluate that case.

1 And so I'm not going to offer an opinion that it is
2 or isn't because there are factors that I would want to
3 consider that are not available in this specific set of facts
4 to me.

5 Q So did I hear you correctly that whether or not that
6 knowledge cross-use is unlawful depends on what application
7 was used to modify the IRS form? Is that your testimony?

8 A Well, my understanding is that there are specific
9 prohibitions or guidance that's been given to the Court about
10 using the PeopleTools environment to develop a fix, and using
11 the PeopleTools to create a fix for one customer and then
12 providing that fix to another, for instance, in the ACA
13 update, where the Court has, as I understand it, given that
14 guidance that that was an inappropriate act.

15 Here, I am lacking an essential fact to be able to
16 evaluate exactly what happened with that .pdf.

17 Q So if -- so does PeopleTools have a text editor or a file
18 editor?

19 A PeopleTools provides to BI the ability to edit W2 -- or
20 to any kind of form, really, in a .pdf format. So, you can
21 create an output .pdf form using the PeopleTools environment.

22 You can create the mappings between PeopleTools data
23 extraction in the population of that form, and so you can
24 create the -- via the vehicle of the xmlp -- or xmlp function
25 that's discussed in this e-mail, that that form could have

1 been created within the tools provided by the PeopleSoft
2 environment.

3 But it could also have been created by other means
4 outside that PeopleSoft environment, and that is the essential
5 information that I'm lacking to be able to sort of fill in the
6 blanks in your hypothetical.

7 Q So in City of Eugene's environment, they have a .pdf
8 editor -- let's say it's made by Adobe, right, who makes
9 pdfs -- and then there's also the PeopleSoft tool that can
10 also edit the .pdf form.

11 It's your testimony that which application the
12 Rimini engineer may use determines whether -- in City of
13 Eugene's environment whether that's cross-use?

14 A I think that that's a very important factor, yes, because
15 my understanding of this is that if you were using the
16 PeopleSoft tools and the PeopleSoft environment in City of
17 Eugene in order to create an update that is then used for
18 other customers, that would be cross-use.

19 If you were using an Adobe editor to create a .pdf
20 and sending it elsewhere, I don't think that that would fall
21 within the injunction because it's not using the PeopleSoft
22 environment, it's not modifying the PeopleSoft code.

23 Q Now, let's turn to print parameters. I know you wanted
24 to get there.

25 So in addition to modifying the form, the .pdf form

1 we've been talking about, you're aware that this update
2 involved changing a print format field setting in City of
3 Eugene's environment, correct?

4 A I think that mischaracterizes the evidence, counsel. The
5 City of Eugene's environment was referenced to see what the
6 PeopleSoft default configuration that had been associated with
7 that particular field was in order to compare and contrast
8 that information to the information for Johnson Controls'
9 default setting for that field.

10 The way that a field is mapped into a form can be
11 defined either in the SQR or -- in the actual source code of
12 the program, or it can be defined as a part of a modification
13 of the PeopleSoft configuration parameters associated with
14 that report.

15 Q This configuration parameter that we're talking about
16 relates to box 17 of the W2 form, correct?

17 A That is correct, yes.

18 Q Okay. And the parameter merely dictates how many
19 characters you can squeeze into the box, correct?

20 A It's not quite that simple, but that's essentially it,
21 that it's dictating how many characters long it will be, and
22 it provides a little bit of additional information like that
23 it's a numeric field and meaning zeroes are suppressed by
24 blanks, but the point that will fix the problem was how many
25 characters long it could be.

1 Q Now, I believe you testified yesterday that -- something
2 to the effect of -- I don't have the transcript, but something
3 to the effect of the Rimini engineer entered into the
4 PeopleSoft environment of a client and uses the tool in that
5 environment, the GUI of it, to make the change. Is that
6 accurate? Or you can correct me.

7 A Yeah. I mean, there were two parts to this.

8 They went -- after they determined that that format
9 was not being provided by the Rimini SQR, so -- that's why it
10 was blank, it wasn't yet provided, then an engineer went into
11 City of Eugene to see what the values were in City of Eugene
12 that was apparently also using the rsi960.sqr.

13 And there they were able to determine -- well, I'm
14 assuming it was City of Eugene only because of the person who
15 sent the notification.

16 They went into a client's environment that was not
17 having the problem. They looked at what the system
18 configuration settings were. They provided an excerpt of
19 those system configuration settings in the e-mail.

20 And, you're right, I don't have definitive proof
21 that that was necessarily City of Eugene's environment, it was
22 from some operational customer.

23 But then later in the e-mail it says that it was
24 tested in City of Eugene, so I'm presuming that that means
25 that that screen excerpt was also from City of Eugene.

1 Q And something just caught my ear. You said Form 960.
2 There's no Form 960 involved in this issue?

3 A No, I meant that the underlying program that was printing
4 to this is one of the 960 programs if I'm remembering the
5 rsi960 -- I don't remember the last two letters. I'm sorry,
6 it's in the e-mail.

7 Q Are you aware that Rimini did remotely connect to City of
8 Eugene's environment and make the change to that print format
9 setting?

10 A I'm aware that that print format setting was changed in
11 City of Eugene at some point in time because City of Eugene
12 was not having the problem and they were able to test
13 successfully there.

14 Whether that had been done years in advance, when
15 they first started using the Rimini version of the program, or
16 whether it was done in the instance of this test, I can't
17 tell.

18 All I know is that they had the setting, and they
19 ran the test successfully because they said they tested it in
20 COE, City of Eugene.

21 Q And you don't know whether the City of Eugene's print
22 parameter was changed in City of Eugene or already there
23 before that e-mail, correct?

24 A I cannot discern that from the e-mail, that's correct.

25 Q But it was the case that Rimini had remotely connected to

1 City of Eugene and made a change at some point to the print
2 parameter that simply controlled how many characters fit into
3 a text box on the IRS form.

4 A Either Rimini or potentially even a City of Eugene
5 employee who was familiar with the system could have done
6 that. I don't know who made that specific change.

7 I know that it was tested in City of Eugene because
8 the e-mail says that. But the e-mail doesn't say when it got
9 put into their system or by whom.

10 Q And we'll get to testing in a second.

11 Are you offering the opinion that the injunction
12 would now prohibit Rimini from connecting to Johnson Controls
13 and making the same change to Johnson Controls' environment to
14 the print parameter setting?

15 A What I understand to be enjoined here was going to
16 another customer's environment and identifying the specific
17 information that needed to be changed and then testing in that
18 environment.

19 This is a small change, comparatively small change,
20 so it's not the issue in my mind of the change itself, but the
21 issue of another customer's environment to do the
22 troubleshooting, to verify what the fix was, and then to
23 perform the testing necessary to confirm that that fix would
24 work in the Johnson Controls environment, or what we believe
25 to work in the Johnson Controls environment, rather than

1 testing it in Johnson Controls.

2 Q We'll get to testing in a second.

3 You're not contending that any file -- as to the
4 print parameters, there's no files sent back and forth between
5 Rimini and City of Eugene, correct?

6 A Well, they had sent these W2s, but setting that aside --

7 Q Yeah.

8 A -- the change that was made was a configuration change
9 that was made in the Johnson Controls environment to match a
10 configuration that was found in another customer's
11 environment.

12 Q Okay. So there was no -- as to the configuration change,
13 just for that print parameter, there was no file sent between
14 Rimini and City of Eugene, or between Rimini and Johnson
15 Controls, or between City of Eugene and Johnson Controls,
16 correct?

17 A The e-mail that was exchanged showed what the parameter
18 needed to be set to. Whether there was any other file that
19 was exchanged that communicated that to Johnson Controls, I
20 don't have specific knowledge.

21 It certainly could have been done without the
22 transference of a file because it was, you know, knowledge of
23 what a configuration setting should be changed to in Johnson
24 Controls' environment in order for it to match the environment
25 of a customer that was not having the problem.

1 Q And you're not offering any opinion that any City of
2 Eugene PeopleSoft files were ever intermingled with any
3 Johnson Controls PeopleSoft files, correct?

4 A In terms of this specific change, that is correct.

5 Q You're aware, correct, that the Court has ruled that a
6 Rimini engineer can, quote.

7 "...use the knowledge he or she gained when
8 developing the same or similar update for client B,"
9 correct?

10 A I'm aware of that, yes.

11 Q And you're aware, correct, that the Court has ruled that
12 it is not cross-use for a Rimini engineer to memorize work
13 done for one client and replicate the work done for other
14 clients, correct?

15 A I believe I recall that passage, yes.

16 Q You testified yesterday that you thought this conduct was
17 a violation of the injunction because Don Sheffield used --
18 and I think you used the phrase very specific information
19 about City of Eugene's environment to benefit Johnson
20 Controls, and you said that took it beyond general know-how.

21 What line are you drawing between specific knowledge
22 and general knowledge?

23 A Well, for instance here, general knowledge might be that
24 we should look at the way in which -- we should go into
25 Johnson Controls' environment, we should look at the way in

1 which this field format is being configured, and we should
2 figure out what works for Johnson Controls.

3 Here, instead of doing that, they go to another
4 client's environment, they say, "Well, this is the exact
5 format that's working in this environment, let's test it with
6 Johnson Controls' data," or presumably with data that was
7 similar to Johnson Controls, "so that we could know if this
8 fixes the Johnson Controls problem, and then we can use that
9 exact same format in Johnson Controls."

10 So it's not determining what format Johnson Controls
11 needs, it's just saying somebody else has this format, and
12 we're going to put that format in Johnson Controls because we
13 think it's going to work based on our testing.

14 Q So that's knowledge.

15 A That is specific knowledge, using the specific knowledge
16 of what was in one client's environment to go into another
17 client and just put that -- that same fix there without any
18 determination of whether that is actually the optimum or the
19 best or even satisfactory fix for that client.

20 Q The Court didn't refer to a line between general and
21 specific knowledge in any of his Honor's orders, correct?

22 A I do not recall those specific terms being used.

23 Q And general and specific knowledge are not in the
24 injunction anywhere, correct?

25 A That is correct.

1 Q If Don Sheffield had figured out the solution for City of
2 Eugene to fix the print parameter, and then his colleague is
3 working in Johnson Controls -- is working on Johnson Controls
4 and the colleague says to Mr. Sheffield, "Hey, have you ever
5 dealt with a situation like this," and he says, "Yes,
6 actually, I have, for City of Eugene. I've changed this print
7 parameter, go to this field in Johnson Controls and change it
8 to this, I think it should work."

9 That would be cross-use, right?

10 A If he gave him the very specific details of exactly what
11 he changed it to, yes. If he said just go and check the print
12 parameter and try some different sizes, then I think that
13 would be general know-how.

14 Q Where did you get this understanding between general and
15 specific knowledge? Is that something that you came up with
16 or that counsel provided you?

17 A It's -- certainly I've had discussions with counsel about
18 this in both this case and other cases, some of which involved
19 trade secret or copyright issues.

20 And the distinction -- you know, I'm well aware that
21 you can't use brain bleach and take a person's know-how out of
22 them, but I think the issue here is whether the specific
23 changes and testing and use of an environment is something
24 that's done on behalf of the diagnosis and troubleshooting of
25 a Johnson Controls' problem, or whether it's more generally

1 that someone just has that know-how.

2 And what we see here is that the Rimini engineer
3 reached out for specific knowledge and used that knowledge
4 from City of Eugene to troubleshoot the problem that was at
5 Johnson Controls, and my understanding of the injunction is
6 that that kind of troubleshooting is prohibited under the
7 injunction.

8 Q This is a copyright case, right?

9 A Yes, it is.

10 Q And the injunction was issued pursuant to findings
11 relating to the Copyright Act, correct?

12 A That is correct, yes.

13 Q Isn't the line here -- shouldn't it be whether the Rimini
14 work product contains protectible Oracle expression, shouldn't
15 that be the line instead of this specific versus general
16 knowledge when the Court has said that you can reuse
17 knowledge?

18 A With all due respect, counsel, the specific behavior the
19 Court has enjoined included troubleshooting. I view this as
20 an instance of troubleshooting.

21 If the Court chose to put troubleshooting in the
22 injunction, I do not feel that it's my place to challenge
23 that.

24 Q Troubleshooting is not in the injunction, correct?

25 A Yeah, it's on behalf of troubleshooting for another

1 customer, using one customer's environment for development or
2 troubleshooting on behalf of another -- I mean, I may be
3 mischaracterizing the exact word, but it is that problem
4 diagnosis troubleshooting type thing that I recall being in
5 the injunction.

6 Q What if it's just Don Sheffield, and he had done the work
7 for City of Eugene, and figured out that the print parameter
8 needed to be changed, and he knew what it needed to be changed
9 to, and he's also responsible for Johnson Controls, is he now
10 prohibited from using that specific knowledge in his brain to
11 do the same update for Johnson Controls?

12 A Well, you're supplying a new set of facts, you know, the
13 facts that were the facts here.

14 But to the extent -- I mean, just looking at the --
15 at the Court's injunction that says that, you know,

16 "Rimini shall not reproduce, produce
17 derivative works from, or use PeopleSoft software or
18 documentation --"

19 COURT REPORTER: I'm sorry, ma'am, slow down.

20 THE WITNESS: Oh, sorry, sorry.

21 "Rimini shall not reproduce, prepare
22 derivative works from, or use PeopleSoft software or
23 documentation on one licensee's computer system to
24 support, troubleshoot, or perform development or
25 testing for any other licensee, including,

1 specifically, that Rimini shall not use a specific
2 licensee's PeopleSoft environment to develop or test
3 software updates or modifications for the benefit of
4 any other licensee."

5 If Mr. Sheffield knew from his experience with
6 some client that going in and changing the print format would
7 be an appropriate way to address some problem, and if he was
8 just relying on that general know-how that, you know, if
9 you're having a print format issue, go look at the print
10 format configuration in the program, and, if it's not there,
11 go look at the print format default supplied for
12 configuration, you know, if that was the knowledge that he was
13 using, and he wasn't going back to that other environment to
14 see what it should be, and he wasn't testing there to see if
15 that was going to fix it, then I'm thinking that that might be
16 permitted.

17 But, here, we have one Rimini engineer reaching
18 out to another engineer, getting information about a second
19 client's environment, working through this whole process,
20 getting very specific guidance as to what needed to be
21 changed, and then applying that in another customer's
22 environment to resolve a problem.

23 So both doing the troubleshooting and the
24 testing in a second customer's environment on behalf of the
25 first customer who is having the problem, I believe, with my

1 understanding of the injunction, that's enjoined behavior.

2 BY MR. VANDEVELDE:

3 Q So assume that Don Sheffield has the most specific --
4 highly specific knowledge that you can imagine that the
5 solution worked, That this print parameter, down to the field,
6 down to the exact format that needs to be what he needs to put
7 into the field, what the config -- it's highly specific
8 knowledge, it's in his brain.

9 A Uh-huh.

10 Q Is it your opinion that Don Sheffield can't use that
11 knowledge, highly specific knowledge in his brain, to make the
12 same print parameter configuration change in Johnson Controls'
13 environment?

14 A Well, that's a different set of facts --

15 Q I'm asking you --

16 A -- than here.

17 And I'm saying if he just had that knowledge in his
18 brain and used his knowledge, you know, that this -- this was
19 a fix, I don't think that would be prohibited.

20 But what happened here is different. They used the
21 other environment to troubleshoot the problem and to verify
22 the fix, and that's the issue that I -- is, according to my
23 understanding, that it's a violation.

24 Q So when you're talking about one employee, this line
25 between general and specific knowledge that you got from

1 Oracle's counsel, that evaporates. You can use even the most
2 highly specific, highly detailed knowledge with Johnson
3 Controls.

4 A He's not making reference to another customer's
5 environment for the purpose of troubleshooting and testing.

6 If it's in his head -- I mean, I don't think the
7 poor man has to get a lobotomy to continue to work, but the --
8 there would be other factors I would want to evaluate. In
9 this specific hypothetical that you've posed here, I think
10 that would be fine.

11 Now, if he had memorized somehow ten pages of Oracle
12 code that had been modified, and had typed those ten pages in
13 verbatim, I would want to look at that as a different kind of
14 case.

15 So I want to be clear here in my answer that with
16 your hypothetical he's gotten one little piece of knowledge in
17 his brain that's an experience that he's had, and maybe even
18 repeated multiple times over the course of his career in
19 fixing similar problems, that -- no.

20 I think in that case, where he's not going back to
21 somebody's environment and looking up what it should be, and
22 testing there, that he's probably entitled to use that
23 knowledge.

24 Q No matter how highly specific.

25 A Again, I've made the clarification that I don't agree

1 with that last part. I think that there will be some -- some
2 point where you cross that line.

3 You know, there's some point -- if you've memorized
4 ten pages of code and taken that elsewhere, I'm not sure that
5 that would be allowed.

6 Q Agreed. Right? He can't memorize the code from City of
7 Eugene, ten pages of Oracle code, and then go retype it in
8 Johnson Controls. Isn't that the line? The line -- isn't it
9 whether or not protected Oracle expression is involved?

10 A No, the line -- because, again, my understanding is that
11 even Rimini's own software that has been developed
12 specifically as an extension, modification, and transformation
13 of the PeopleSoft environment, it's my understanding that that
14 is deemed to be a work that is a derivative work, and so it
15 falls within the provision of derivative work.

16 I mean, we're talking about a different provision
17 here, the troubleshooting and the use of an environment for
18 testing on behalf of one customer to the other.

19 But, you know, in each instance I would want to
20 fully evaluate your hypothetical in the context of the actual
21 injunction as I understand it to be.

22 Q Yeah, and on this issue there's no -- you don't have an
23 allegation that there's a derivative work, right? We're not
24 talking about a derivative work here, correct?

25 A No, we're talking about the use of one customer's

1 environment for troubleshooting and testing on behalf of
2 another customer.

3 Q What if Rimini has 50 clients with this same issue?
4 You've opined, haven't you, that Rimini cannot reuse its
5 solution with the 49 other clients, correct?

6 A Again, you're -- in this specific instance where the
7 knowledge of the solution is not making reference to another
8 client's environment for testing and troubleshooting, and it's
9 a small enough matter like this where someone might arguably
10 have it in their head that "this fix worked for me before,
11 I'll try it here," if they go into that customer's
12 environment, into Customer B or Z or X's environment, and they
13 try to fix -- you know, they develop the fix in that
14 environment, they test the fix in that environment, I don't
15 think that that's problematical.

16 MR. VANDEVELDE: Can we pull up
17 Ms. Frederiksen-Cross's deposition, page 154, line 14, to 155,
18 line 15.

19 BY MR. VANDEVELDE:

20 Q Now, you were asked the question,

21 "Now, imagine 49 other clients with the same
22 version of PeopleSoft had the same file with the same
23 erroneous transposition of those two digits of the
24 year. Can that engineer go into each of those 49
25 environments, those client environments, separately

1 and implement the same fix correcting that erroneous
2 transposition without violating the injunction?"

3 And if you could scroll down.

4 And you answer --

5 MR. SMITH: Your Honor, if this is impeachment,
6 I would like to have the entire question read.

7 MR. VANDEVELDE: I can read more it if you would
8 like. There is a prefatory part to it. Would you like me to
9 read the prefatory part?

10 MR. SMITH: Yeah, the entire question and
11 answer.

12 MR. VANDEVELDE: Okay.

13 THE WITNESS: I think it would be helpful --

14 MR. VANDEVELDE: Sure.

15 THE WITNESS: -- to read the entire hypothetical
16 so that it has proper context, not just this one question out
17 of context.

18 MR. VANDEVELDE: Can you -- yeah, I'll read it.
19 So I say,

20 "Okay. And he fixes that transposition. He
21 saves that file, he tests the file, he runs a series
22 of tests to make sure that the behavior of the
23 software works as anticipated, that takes more time,
24 and he solves the problem for client A.

25 "Now imagine 49 other clients with the same

1 version of PeopleSoft, have the same file with the
2 same erroneous transposition of those two digits of
3 the year, can that engineer go into each of those 49
4 environments, those client environments, separately
5 and implement the same fix, correcting that erroneous
6 transposition without violating the injunction?"

7 And if you could turn to the answer, please.

8 And you testified, "If you're asking can he
9 implement the exact same fix relying his knowledge
10 gained in the first environment and the testing that
11 he did there to note that that was the right test,
12 again, I think that falls afoul of the sixth bullet
13 item in the injunction.

14 "Now, is there a way he can make that fix
15 for other customers? There doubtless is because code
16 can be changed in many different ways, and there's
17 many ways to fix the same problem. But it's not at
18 all clear to me from the injunction that he would be
19 free to reuse that same fix. I think he'd be
20 prohibited from relying on that detailed knowledge of
21 the defect in the fix that he got in the first
22 environment."

23 BY MR. VANDEVELDE:

24 Q That was your testimony, correct?

25 A That was my testimony at the time, yes.

1 Q You offered testimony yesterday about the ease of access
2 to City of Eugene's environment during your direct
3 examination. Do you remember that?

4 A That is correct, yes.

5 Q Is it your opinion that when multiple clients are
6 affected by the same issue, like this W2 issue we're taking
7 about here, that the injunction prohibits Rimini from starting
8 in a client environment that's easy to access?

9 A Not specifically, no.

10 Q Are you contending that the injunction requires Rimini to
11 develop solutions for those clients that have the same issue
12 in a particular order?

13 A I'm not aware of any requirements relating to order.

14 MR. VANDEVELDE: John, if you can bring up tab
15 5, please, which, Ms. Frederiksen-Cross, it's your opening
16 report, paragraph 16, and can you put the continuation of 16
17 up there as well.

18 BY MR. VANDEVELDE:

19 Q You wrote in your report in paragraph 16 that you
20 understand that,

21 "Any development or testing of an update to
22 Oracle's software, with one customer's licensed
23 Oracle software, constitutes cross-use if the update
24 is provided to another customer and that such
25 cross-use violates all relevant licenses."

1 That is what you wrote, correct?

2 A That is correct.

3 Q And that is regardless of the content of the update,
4 correct?

5 A That was correct at the time I wrote it. I understand
6 that the judge, in his orders, related to the -- what has
7 transpired since between the parties, has offered opinions
8 that have caused me to reshape this opinion slightly based on
9 my understanding of the Court's intent.

10 Q But this opinion, that "any development or testing of an
11 update to Oracle software with one customer's licensed Oracle
12 software constitutes cross-use if it is provided to another,"
13 that's regardless of whether of any of the components of that
14 update contain protectible work or expression, correct?

15 A That is my understanding, yes. So as long as the update
16 is an extension, a modification, transformation, recasting of
17 the PeopleSoft environment.

18 So, if the update were completely just jumped from
19 the PeopleSoft environment but merely happened in the
20 environment, then I would want to evaluate the specific
21 instance to understand how it falls within the scope or
22 outside the scope cross-use.

23 Q So you don't know in that case.

24 A In the event that the update was developed without use of
25 the PeopleSoft environment, but maybe had some adjunct

1 functionality in the client's environment, I would want to
2 look at the specific instances to understand the tools that
3 were used and whether or not the Oracle environment was used
4 in the testing and development.

5 But if -- if it was a change to the Oracle
6 PeopleSoft code and, as we've just established something that
7 is outside general know-how because the Court has specifically
8 said that they are not going to restrict Rimini's know-how
9 provisions.

10 But if it was a specific change to the PeopleSoft
11 environment, to the PeopleSoft code, as I'm opining here, then
12 I would understand it to be cross-use outside that category of
13 just general know-how.

14 Q Okay. So just to make sure I got it, it is the case that
15 you are sticking with this opinion regardless of whether any
16 components of the update contain any Oracle protectible
17 expression.

18 A So long as the update itself is an extension,
19 transformation, modification, recasting of the PeopleSoft
20 environment, that is my current understanding, counsel, that
21 it would still be cross-use that violates.

22 Q And regardless of whether additional testing or
23 development occurred in client B, correct?

24 A I think the answer to that would depend on when that
25 testing occurred.

1 Q It depends on when the testing occurred?

2 A Well, if you provide a fix, "Here's your fix, Customer
3 B," and that fix was developed in Customer A's environment
4 using Customer's A license and tested in Customer's A
5 environment using Customer's A license, and then you provide
6 that fix to Customer B, it's my understanding that that would
7 be a violation regardless of whether Customer B subsequently
8 performed additional testing, because that fix was not
9 developed in Customer's B environment, was not developed using
10 Customer's B PeopleSoft tools, or PeopleSoft environment for
11 its development and testing.

12 And so if they come along and test later, I don't
13 think that that erases the fact that they have been the
14 recipient of the work that was done in another customer's
15 environment under another customer's license.

16 Q So cross-use.

17 A Cross-use.

18 MR. VANDEVELDE: Can you please bring up
19 paragraph 17, and, yeah, call it out. Thank you.

20 BY MR. VANDEVELDE:

21 Q You wrote in paragraph 17 that you understand that,
22 "Any reproduction of, distribution of, or
23 creation of a derivative works with one client's
24 licensed Oracle software constitutes cross-use if
25 that reproduction, distribution, or creation of

1 derivative works benefits another customer."

2 And I wanted to focus on that word "benefits."
3 You don't limit that word "benefits" -- there's no limitation
4 on that, correct?

5 A Actually, just to be clear, it would probably be more
6 clear to say if it's used for the benefit of another customer,
7 because if it has just a hypothetical benefit, but it's never
8 applied to the customer's environment, obviously that's a
9 different case than if it's actually provided to a customer
10 and used for the benefit of that customer.

11 Q Okay. But you do not place any restriction or limitation
12 on the types of benefits, correct?

13 A My understanding is that the injunction doesn't place
14 such limit and so I have not placed such limit.

15 MR. VANDEVELDE: You can take that down, John,
16 please.

17 BY MR. VANDEVELDE:

18 Q Let's switch to the next issue, issue number 4, and
19 that's regarding the rsi940a.sqr update relating to Spherion
20 and Smead. Do you remember that?

21 A Yes, I do.

22 Q And this IRS form at issue was a Schedule A to form 940;
23 is that right?

24 A That is my recollection, yes.

25 Q Do you know what that form is?

1 A Oh, I have to think for a minute. I would want to take a
2 look at the form probably to -- there's so many IRS forms.

3 Q I understand. I feel the same way. But it's a federal
4 form, correct?

5 A I do understand it to be a federal form, yes.

6 Q The IRS puts it out?

7 A Yes, they dictate what needs to be in that form to be
8 reported.

9 Q And the problem here was that Xs put on the form, there's
10 a misalignment issue? Do you recall that?

11 A I do recall that it was some kind of misalignment issue,
12 yeah.

13 Q And you've offered the opinion that Rimini's update for
14 Smead and Spherion was cross-use of a fix previously
15 implemented for City of Eugene?

16 A That's correct, yes.

17 Q And in support of your opinion that this testing
18 cross-use occurred in this instance, you cited an e-mail
19 thread between Rimini engineers, including Jim Bengel, Tim
20 Pringle, and Don Sheffield; is that right?

21 A I remember those individuals being involved in the e-mail
22 exchange. There may have been others, but I remember those
23 individuals.

24 Q And you noted in your report that Don Sheffield says in
25 an e-mail that he, quote, "completed testing in City of

1 Eugene," correct?

2 A Correct.

3 Q And you were suggesting that there was no testing
4 performed in Smead or Spherion; is that right?

5 A There was -- it was my understanding, and is my
6 understanding, that there was no testing of that specific fix
7 performed in Smead and Spherion prior to the provision of that
8 fix, that it was provided to them based on the testing in City
9 of Eugene.

10 Q You don't know whether testing was performed, right?

11 A I saw no evidence of it in the record.

12 Q So you're not offering an opinion on whether there was
13 testing or not?

14 A My opinion is that there is no evidence that there was
15 testing.

16 Q And, again, just because someone doesn't describe an
17 event in an e-mail doesn't mean that event didn't happen,
18 correct?

19 A Rimini uses a system to specifically track its testing,
20 and so that's a little bit different than your analogy
21 yesterday about I e-mailed you, and I didn't tell you I had
22 lunch and did I have lunch.

23 You know, they have a specific mechanism in place to
24 test -- or to track -- well, actually to track test cases and
25 where those cases are performed. That's their Spira system.

1 Q Yet that's not what you relied though, right? You only
2 relied on the e-mail from Don Sheffield, correct?

3 A I relied on the evidence that was made available to me
4 more broadly, and I see nothing that indicates that that
5 testing occurred as a part of the development of that fix in
6 the Spherion or Smead environments.

7 Q But your opinion is based solely on that e-mail, correct,
8 in your report?

9 A I don't recall if I mentioned any other material in the
10 report or not. I would have to look at that paragraph.

11 MR. VANDEVELDE: If we could bring up tab 5,
12 paragraph 275, please.

13 BY MR. VANDEVELDE:

14 Q All right. This is the paragraph in your report about
15 this issue, correct?

16 A It is at least a paragraph in my report about that issue.

17 Q And you reference a 940A GIF file, correct, in the second
18 line?

19 A Yeah. Let me read the paragraph, if you don't mind,
20 counsel.

21 Q Of course.

22 A Okay.

23 Q There's a reference to a GIF file, correct?

24 A Right.

25 Q That's a Graphic Image File?

1 A Yeah, that's another way of doing a form other than a
2 .pdf that the system can use as an underlying template for the
3 form that's being printed.

4 Q So it's just an image of the IRS form, right?

5 A Yeah, basically.

6 Q And you're not offering any opinion that there's any
7 cross-use violation with respect to this 940 GIF file,
8 correct?

9 A No, the cross-use was with respect to the change to the
10 rsi940.sqr program.

11 Q Okay. And that's the one I want to talk about next.

12 You have not disclosed any opinions in any of your
13 expert reports or declarations about whether or not rsi940.sqr
14 is substantially similar to any Oracle code, correct?

15 A As I sit here, I do not recall having given any
16 substantial similarity opinion.

17 Q You are not offering an opinion on whether City of Eugene
18 was affected by this 940 -- this Form 940 issue, correct?

19 A I am not offering the opinion that there was any known
20 problem prior to this development that took place to provide
21 the fix to Spherion and Smead.

22 Q And City of Eugene is in the United States?

23 A Yes.

24 Q And you didn't cite any evidence that City of Eugene ever
25 told Rimini it didn't need or want the update, correct?

1 A I don't believe I have offered any opinion to that
2 effect, counsel.

3 MR. VANDEVELDE: If we could pull up tab 27,
4 please, which is another demonstrative relating to this issue
5 number 4.

6 BY MR. VANDEVELDE:

7 Q So we're looking at another demonstrative. There are
8 four gray boxes in this one instead three. There's a City of
9 Eugene box, do you see that?

10 A I see that.

11 Q And it represents City of Eugene's systems.

12 And then there's a Spherion and Smead box for each
13 that represents their PeopleSoft environments? Do you see
14 that?

15 A I see that.

16 Q And then there's a Rimini box at the bottom that
17 represents Rimini's systems. Do you see that?

18 A I see that.

19 Q You understand the general concept behind this is to show
20 the different -- the four different systems and environments
21 that we're looking at?

22 A I see that, yes.

23 Q Okay. And, again, in City of Eugene we have put four
24 files with some red lines to represent City of Eugene's
25 PeopleSoft environment, do you see that?

1 A I see that, though I'm curious why rsi940A, which is an
2 extension of that environment, is in a different color.

3 Is that just to highlight that that's the file we're
4 talking about?

5 Q We'll get to that in a second.

6 A Okay.

7 Q But, yeah, just the four files with the red lines, it
8 just conceptually represents the City of Eugene's PeopleSoft
9 environment.

10 A Okay.

11 Q And then we have the same for Spherion and Smead. They
12 each have their own PeopleSoft environments on their own
13 systems?

14 A I see that.

15 Q Okay. And there's no red files on Rimini's because, as
16 we established yesterday, there's no PeopleSoft environment on
17 the Rimini's systems, correct?

18 A No environment, yes, that's correct.

19 Q Okay. Okay. Now, we talked about the GIF file which is
20 represented by that IRS form, do you see that, in both the
21 Rimini box and on the City of Eugene box?

22 A I see that.

23 Q So that's the GIF file, that's what that represents.

24 A That's the image file.

25 Q Image file.

1 And then there's a file labeled rsi940a.sqr that's
2 in blue. Do you see that?

3 A I see that.

4 Q And it's on Rimini's systems and it's on City of Eugene's
5 systems. Do you see that?

6 A I see that.

7 Q And, again, you didn't offer any opinions on whether the
8 contents of the rsi940a.sqr are substantially similar to any
9 Oracle code, correct?

10 A Again, I do not, as I sit here, recall offering that.
11 There's been a lot of reports, but I don't recall that
12 specific file being the focus of that particular analysis.

13 Q Okay. So assume, then, that that rsi940a.sqr file is not
14 substantially similar to any Oracle code in the universe. Do
15 you understand that?

16 A Okay. I'll take that as your hypothetical.

17 Q Well, you have no opinion otherwise, right?

18 A Yeah, but I'm just stating that, you know, we're talking
19 about this in a hypothetical. That's something I would --

20 Q Well --

21 A -- check if it were called out but --

22 Q I know you're saying it's a hypothetical, but you're not
23 offering an opinion on the contents of that file either way,
24 correct?

25 A With respect to whether or not it's substantially similar

1 to Oracle, that is correct.

2 Q Okay. Now, assume City of Eugene is affected by the
3 issue, which you don't have an opinion on you said earlier,
4 and assume Rimini has the rsi940a file on its systems, and
5 Rimini makes modifications to the files to address the issue
6 with this IRS form and sends the file to City of Eugene which
7 is why then we see it on City of Eugene's environment. Do you
8 understand?

9 A So far I'm with you.

10 Q And Rimini tests this update. So it does whatever it
11 does to apply the update to the City of Eugene environment, it
12 runs it, it tests it, and it's successful. Do you understand?

13 A Okay. So it's modified the City of Eugene's PeopleSoft
14 environment to incorporate this change to the program. It
15 runs it and tests it in City of Eugene's PeopleSoft
16 environment --

17 Q Yeah.

18 A -- and presumably it fixes the problem. I mean, that's
19 where we're at right now, right?

20 Q Yeah. Correct.

21 A Okay.

22 Q So when that Rimini file is sent to City of Eugene and
23 it's applied to the Oracle environment, that is a changed
24 Oracle environment as a whole. That environment is now a
25 derivative work, correct?

1 A Uh-huh, yes.

2 Q Because it has Oracle code in it, a substantial amount,
3 correct?

4 A Certainly.

5 Q Okay. Are you offering the opinion that the injunction
6 prohibits Rimini from sending that rsi file and that rsi form
7 -- sorry, that IRS form to Spherion or Smead from Rimini's
8 systems?

9 A Yes, because it is my understanding, based on the
10 guidance I have been given by counsel, that that Rimini code
11 file is, in fact, a derivative work insofar as it is a file
12 that depends totally for its operation on the Oracle
13 PeopleSoft environment that is an extension and modification
14 to the PeopleSoft environment, and that is it's underlying
15 dependence.

16 Further, I have looked at this code file and I know
17 that it includes -- and we discussed this on my testimony --

18 Q Wait a second.

19 A -- yesterday or the day before --

20 Q I want to object, because you testified earlier you are
21 not offering the opinion on the contents of any of that file,
22 you've never disclosed any analysis regarding the contents of
23 that file, and what your testimony sounds like it was about to
24 be was not disclosed in any report you have ever written,
25 correct?

1 A With all respect, counsel, I have mentioned, I am sure,
2 the fact that this file includes SQCs that are Oracle SQCs,
3 and we talked about those in my testimony the other day.

4 So the file itself, the individual lines of code in
5 the file may be entirely Rimini authored, but the file when
6 run includes Oracle code because it brings that code into the
7 file, and that's how we know it's dependent on that Oracle
8 environment.

9 Q And I want to talk about that for second because you
10 testified yesterday about #includes.

11 That merging, right, and the importation of those
12 #include files of Oracle code, that only happens in City of
13 Eugene's environment. That is not happening on Rimini's
14 environment, correct?

15 A Not unless Rimini is running a bootleg copy of Oracle
16 which we haven't seen any evidence of.

17 So as far as I know, they are not able to run that
18 file or test it on their systems, and the representation is
19 that the text was typed in on their system.

20 Q So let me ask again. That #include process where there's
21 a merging of an Oracle file in the Rimini written code, that
22 is only happening in City of Eugene's environment, correct?

23 A Or any other environment where that software was
24 installed and run.

25 Q Okay. But we're talking about City of Eugene. So when

1 you said #include and set environment dot SQC, and the merging
2 of the -- that is only in City of Eugene's environment, right,
3 in this issue, and when you talked about that.

4 A At this point in time in your hypothetical where this
5 file is only on City of Eugene's system, that's correct.

6 My point was just that that is part of the evidence
7 that this is a derivative work of the PeopleSoft environment.

8 Q But you testified you were not offering an opinion on
9 whether the file substantially incorporates Oracle expression,
10 correct, the rsi940a file?

11 A But I have offered the opinion that it depends solely for
12 its operation on the PeopleSoft environment and it is an
13 extension and modification of that environment.

14 Q You're not opining that the rsi940a file that Rimini
15 created was ever sent directly between clients, correct?

16 A I don't recall offering any such opinion, counsel.

17 Q And you're not offering any opinion that any of the
18 Oracle PeopleSoft files in any of these three clients'
19 separate environments was ever intermingled, correct?

20 A In the context of this litigation, that is correct, or
21 the matter before the Court here today.

22 Q And when testing occurs in City of Eugene's environment,
23 I think you testified in your direct that copies are made,
24 correct, RAM copies?

25 A That is correct.

1 Q Okay. Those RAM copies, though, they never leave City of
2 Eugene's environment, they're always in City of Eugene's
3 environment, correct?

4 A As far as I know, that is correct. I mean, I'm not aware
5 of any instance where anyone has taken a memory snapshot and
6 sent it anywhere. So as far as I know, that is correct.

7 Q Okay. So no RAM copies in City of Eugene's environment
8 have ever been shared with any other client, correct?

9 A As far as I know, that is correct, counsel.

10 Q What if, instead of sending another copy of the Rimini
11 code, rsi940a, instead of sending it to Spherion, Rimini
12 created a blank file in Spherion and just retyped its own
13 expression again, is that unlawful cross-use?

14 A If they are reusing the file, which I understand to be a
15 derivative work in this instance that was developed in City of
16 Eugene's environment, I see no distinction with respect to how
17 it gets to the new environment.

18 So if they -- if they typed it in, if they printed
19 it on a piece of paper, went and sat in the new environment
20 and typed it in, they are still reusing the product that they
21 developed on another client's system.

22 Q Even if they memorized it?

23 A Well, it's a fairly long file. I think that would be
24 unlikely. But maybe you've got somebody with a perfect
25 memory, a photographic memory guys.

1 Again, still, I think, that in the scenario you're
2 talking about where one client's environment has been used for
3 the development and testing, and that development is not
4 repeated in another client's environment, I think you're
5 violating the injunction with respect to the reuse of a
6 derivative work in another environment.

7 I mean, that's my understanding of the injunction
8 and of the derivative work, as I understand it.

9 Q And you got your understanding of a derivative work from
10 Oracle's counsel?

11 A In part from Oracle's counsel, though this issue has come
12 up in other contexts that I have worked on as well.

13 Q Okay. So even if that Rimini expression, if the engineer
14 just remembers it, he can't even retype it for Spherion and
15 Smead. That's your opinion.

16 A My understanding is that it needs to be developed in each
17 client's environment, and merely doing a rote recreation,
18 whether it's by copy and paste, by manually typing in from a
19 printout, or in your hypothetical, from having memorized this
20 big file and then typing it in afresh, it is a recreation in
21 the new customer's environment for the benefit of that
22 customer of work that was done and developed in another
23 customer's environment, and, as I understand the injunction as
24 it's written, that would be prohibited.

25 Q Let's turn to issue number 10, which is the update

1 HCM200105 involving Rockefeller and Home Shopping Network, and
2 the Court --

3 THE COURT: Excuse me.

4 MR. VANDEVELDE: Oh, sorry.

5 THE COURT: I'm thinking this is a new subject
6 which will probably take some time so let's --

7 MR. VANDEVELDE: Oh, perfect.

8 THE COURT: Why don't we go ahead and take our
9 morning break at this time and resume with that at the
10 conclusion of the break.

11 MR. VANDEVELDE: Sounds good.

12 THE COURT: We'll take a break until between
13 10:35 and 10:40, depending on when everyone is ready.

14 MR. VANDEVELDE: Thanks, your Honor.

15 (A recess was taken.)

16 THE COURT: Have a seat, please.

17 The record will show we're reconvened after the
18 morning break.

19 Mr. Vandeveld, go ahead, please.

20 MR. VANDEVELDE: Thank you, your Honor.

21 BY MR. VANDEVELDE:

22 Q Before the break we were about to turn to issue number 10
23 which relates to HCM200105 relating to two Rimini clients,
24 Rockefeller and Home Shopping Network. Do you remember that?

25 A Yes.

1 Q And the Court, in its order to show cause, wrote that it
2 was not clear whether the update was sent directly to those
3 clients, or developed and tested in their own environments.
4 Do you remember that?

5 A Yes.

6 MR. VANDEVELDE: And if we could put up another
7 demonstrative, which is tab 41, with respect to this issue
8 number 10. Thank you.

9 BY MR. VANDEVELDE:

10 Q Do you see that in front of you?

11 A I do, yes.

12 Q Okay. This one also has four large gray boxes. One is
13 labeled "First Client," and what that indicates is the client
14 in which Rimini first developed the solution for this issue.
15 Do you understand that?

16 A I do.

17 Q Do you know the identity of that first client?

18 A With respect to this change, I don't believe I do. I
19 would want to check back in my report, but my recollection is
20 we know where it was tested, but not where it was necessarily
21 first developed.

22 Q Okay. And then there's a large gray box labeled
23 "Rockefeller Group," and another large gray box labeled "Home
24 Shopping Network," and then finally, as in all these slides,
25 at the bottom is a box labeled "Rimini." Do you see those?

1 A I see those, yes.

2 Q And, again, in each of the three client environments, the
3 first client Rockefeller and Home Shopping Network, there are
4 four files that are just a conceptual representation that they
5 each have their own separate PeopleSoft environment. Do you
6 see that?

7 A Okay.

8 Q And then in the Rimini box you see a file with blue
9 lines, and it's labeled rsiqtrtax.sqr, I'll refer to it as rsi
10 quarter tax. Do you see that?

11 A Yeah.

12 Q And that's on Rimini's systems, and it's also in City --
13 sorry, First Client's environment. Do you see that?

14 A I see that.

15 Q Now, you didn't offer or disclose in any of your reports
16 any opinions that the contents of rsi quarter tax are
17 substantially similar to any Oracle code, correct?

18 A Of the file itself does, correct, yes.

19 Q And assume that First Client, we're calling it, is
20 affected by this issue. Do you understand that?

21 A The issue with rsi quarter tax, that was one of Rimini's
22 one size fits all files that it was developing in order to
23 consolidate the various different varieties that customers had
24 on their machines.

25 So when you say "it was affected by this issue," are

1 you presuming there was some problem with it or something that
2 they were fixing or what -- what is the hypothetical there?

3 Q Well, the problem in this particular issue, issue 10, was
4 relating to an Oregon quarterly tax reporting issue. Do you
5 recall that?

6 A Yeah, I think it was an update when they added the
7 transportation tax for Oregon, if I recall correctly.

8 Q Okay. So it was some issue relating to an Oregon tax
9 issue, correct?

10 A That's my recollection of this specific problem that
11 HCM200105 represents.

12 Q Okay. So back to my earlier question. Will you assume
13 that the first client was actually affected by that Oregon tax
14 reporting issue?

15 A Okay. I will make that assumption for you.

16 Q And assume that Rimini has the rsi quarter tax on its
17 systems -- in fact, it did, correct?

18 A Yeah, because it distributed it from its systems.

19 Q And assume Rimini makes modifications to the file to
20 address this Oregon tax issue and sends the file to the first
21 client, which is why we see it here in the first client's
22 environment. Do you understand that?

23 A I'm with you so far.

24 Q Okay. And then Rimini remotely connects to the first
25 client's environment and tests the update, that file within

1 the client's environment, and I would assume that you would
2 say that RAM copies during that testing would be created?

3 A They would necessarily during testing, yes.

4 Q Okay. And those RAM copies though, those are only in the
5 first client's environment when that testing is happening,
6 correct?

7 A Right. And just to be clear, they're the compiled RAM
8 copies during the test. But, yes, they would just be in that
9 client's environment.

10 Q Okay. And you're not offering any opinion that any
11 Oracle files between the three separate siloed client's
12 environments was ever intermingled in any way, correct?

13 A With respect to this specific update, that is correct.

14 Q Okay. And so when that testing occurs in the first
15 client's environment, and those RAM copies are made, you're
16 not opining that somehow those RAM copies were ever -- ended
17 up in Rockefeller or Home Shopping Network or any other
18 client, correct?

19 A That's correct.

20 MR. VANDEVELDE: If we could just switch briefly
21 to another exhibit -- tab 5 of your opening report, and we'll
22 come back to this demonstrative. It's tab 5 of paragraph 348.
23 BY MR. VANDEVELDE:

24 Q And you reference -- you can see it on your screen, too,
25 whichever is easier.

1 A Yeah. I just like to sometimes be able to look and see
2 what context if you're just taking one paragraph out of
3 context, or any context as the case may be.

4 Q Sure.

5 A Okay.

6 Q So in that paragraph, 348, on the third line you
7 reference a test case 8484. Do you see that?

8 A I see that, yes.

9 Q And you state that it was created on October 7th, 2018,
10 and executed 94 times between October and December, roughly,
11 2018. Do you see that?

12 A I see that, yes.

13 Q Okay. You're aware that Rockefeller was not a client at
14 that time of those tests, correct?

15 A I am aware of that, yes.

16 Q Okay. And you're aware that Home Shopping Network was
17 not a client of Rimini's at the time of those tests, correct?

18 A I'm aware of that as well, yes.

19 Q So any RAM copy that was created in that first client's
20 environment for the testing in that first client's
21 environment, it couldn't possibly have been for the benefit of
22 Rockefeller, correct?

23 A You're saying when a RAM client was run -- when a RAM
24 copy was created when a test was performed on some other
25 user's system, that that test was not for Rockefeller's

1 benefit.

2 Q Well, Rockefeller is not a client yet, right? So the RAM
3 copy in the first client's environment could not possibly have
4 been for the benefit of Rockefeller, they're not even a Rimini
5 client.

6 A I'm not sure that I agree entirely, counsel, to the
7 extent that Rimini used the initial -- let's take the initial
8 client environment, for example.

9 To the extent that Rimini developed this rsitaxqtr
10 in order to consolidate -- or to create a one size fits all
11 tax reporting file that was going to be ultimately provided to
12 all of its clients, or as many as it could, I think that that
13 contemplates the benefit of future clients as well because
14 their specific purpose in doing so was we're going to develop
15 this one size fits all, and, of course, the first client isn't
16 all, it's the first client.

17 But the development, the intent of the development
18 for this fix is to create a fix that will ultimately be
19 deployed across multiple clients for the benefit those
20 multiple clients. I mean, hopefully, it's not for their
21 detriment.

22 And so if you're doing that, that initial
23 development in the first client's machine, while I don't
24 dispute that it may benefit that first client, you can't
25 exclude that that development or that testing that happened in

1 the first client's machine is for the benefit of the
2 subsequent clients.

3 And similarly, if along the way in those intervening
4 periods some defect was found in the program and corrected in
5 some environment, again, that is going to benefit all of the
6 ultimate recipients.

7 Q You said "contemplate," and I think you may have said the
8 word "intent," although I'm not sure if I caught it. Are you
9 saying that there's an intent requirement with respect to
10 cross-use?

11 A No, no, I'm not saying that. I'm saying that in this
12 particular instance, because I'm familiar with this particular
13 program, this was one of the files that was initially, at
14 least, intended to be rolled out to -- across many clients.

15 I was just making that observation. I wasn't saying
16 that the intent is related to the cross-use issue at all.

17 Q Okay. So --

18 A Or that an intent in advance.

19 What I am saying is that this development was
20 intended to be on behalf of many clients, and, in fact, was on
21 behalf of many clients as we see from the testing log.

22 Q So what's the relevance of intent if you keep testifying
23 that it's "intended for other clients"? Is that part of your
24 definition of cross-use or not?

25 A No, but the cross-use is the fact that a -- the

1 development done in one customer's -- development and testing
2 done in one customer's environment to this file, which is an
3 extension of the PeopleSoft environment, or a modification of
4 the PeopleSoft environment, is then used for the benefit of
5 customers in other environments.

6 Q Even customers that don't even exist yet.

7 A Sure, because it's used for them once they exist.

8 Q So if Rimini has just one client and they're -- we hope
9 we get more clients, we're not sure, if they end up do getting
10 clients, then it somehow makes the prior use of that first
11 client's environment cross-use?

12 A That is my understanding just under the way the language
13 of the injunction is framed.

14 MR. VANDEVELDE: John, if you could bring back
15 the demonstrative, please.

16 BY MR. VANDEVELDE:

17 Q So it's your opinion that when Rockefeller and Home
18 Shopping Network hire Rimini the next year, that the RAM
19 copies that don't exist anymore but that did exist in the
20 previous year, those are now retroactively used for the
21 benefit of Rockefeller and Home Shopping Network.

22 A To the extent that those RAM copies are the artifact of
23 development and testing in one customer's environment -- the
24 RAM copies themselves are not used, but the benefit of having
25 made those RAM copies, the benefit of having used a customer's

1 environment to create a fix or an update or a program
2 that is then subsequently provided to other customers
3 where that fix -- in this case it is a PeopleSoft -- an
4 extension or modification to the PeopleSoft environment, it is
5 my understanding that that use of the first customer's
6 environment still benefits the subsequent customers.

7 The RAM copy -- the RAM copy exists in the first
8 customer's environment, the RAM copy doesn't go anywhere, but
9 the fruits of having created that RAM copy to do development,
10 to do testing, to do the iterative process as necessary to
11 make sure that this program, which is an extension of the
12 PeopleSoft environment, performs its intended function in the
13 PeopleSoft environment, is still for the benefit of any
14 subsequent customer that receives it.

15 Q Okay. Just focusing on the first client for a second.
16 Those RAM -- so Rockefeller and Home Shopping Network are not
17 even clients yet.

18 The first client, Rimini is doing its work and
19 creates its own expression, rsi quarter tax. You have no
20 opinion on whether it's substantially similar to any Oracle
21 code in the universe, and Rimini tests it there, those RAM
22 copies, those don't violate the injunction at that time,
23 right?

24 A On the initial client where the software is developed and
25 tested, there's -- unless there was some other prohibition in

1 place in the license or something, that those would not
2 violate.

3 Q And when testing is over the RAM copies go away, right?

4 A That is correct.

5 Q So they no longer exist.

6 A The RAM copies no longer exist, that's true.

7 Q Okay. And then a year later Rockefeller and Home
8 Shopping Network hire Rimini, they have the same issue and
9 need the update, and Rimini wants to send its rsi quarter tax
10 file to those.

11 At that moment -- we're now a year later, those RAM
12 copies don't even exist, but the fruits of it kind of exist
13 forever, and so now that's impermissible to use?

14 A The first customer's environment was used to develop that
15 fix under the color of that first customer's license.

16 Sending that fix to another customer, and applying
17 it in their environment, when I understand that fix to be a
18 derivative work of the PeopleSoft environment, I understand to
19 be prohibited under the injunction.

20 Q At the time Rimini sends that rsi quarter tax file to
21 Rockefeller, what copy is being cross-used?

22 A The copy of rsi quarter tax is being cross-used.

23 Q But what client's Oracle software is being cross-used at
24 that moment the next year?

25 A The Oracle software on the environment where that fix was

1 developed and tested.

2 Q But that RAM copy doesn't exist anymore.

3 A I'm not talking about the RAM copy. You keep bringing up
4 the RAM copy.

5 But I am talking about the injunction specifically
6 says that you won't use one customer's environment for
7 development and testing of a fix that benefits -- that's used
8 for the benefit of another client, or that is my understanding
9 of what the Court's prohibition here was, in other words, each
10 client's fixes need to be developed in that client's
11 environment.

12 Q And is your environment based on the rsi quarter tax
13 somehow being a derivative work?

14 A Well, I think they're somewhat separate issues but
15 related.

16 Rsi quarter tax is, as I understand it, a derivative
17 work of the PeopleSoft environment, but the prohibition
18 doesn't -- for instance, paragraph 6 of the injunction says,

19 "Rimini Street shall not reproduce, prepare
20 derivative works from, or use PeopleSoft software or
21 documentation on one licensee's computer system to
22 support, troubleshoot, or perform development or
23 testing for any other licensee including,
24 specifically, that they shall not use a specific
25 licensee's PeopleSoft environment to development or

1 test updates or modifications for the benefit of any
2 other licensee."

3 Now, here presumably Rimini is sending that fix
4 to Rockefeller and Home Shopping Network for their benefit.
5 They need the fix, you said.

6 And so in this instance, even though it's a year
7 later, that development was done on the first client's
8 machine. The testing was done on the first client's machine.

9 And I don't dispute that the first client may
10 also have received a benefit from that, but as I understand
11 the injunction, this would still be prohibited.

12 Q So, let me ask that question again.

13 Does your opinion depend on the file, rsi quarter
14 tax, being a derivative work in your view?

15 A It doesn't depend solely on that, no. Because, again,
16 the first client's environment, it's licensed to PeopleSoft
17 software. PeopleSoft software is being used in support of
18 other clients when that Rimini code is propagated to their
19 environments.

20 Q Let me ask, though, at the moment Rimini is sending that
21 rsi quarter tax file, which you said you have no opinions on
22 whether it is substantially similar to any Oracle code, at
23 that moment Rimini sends it to Rockefeller, first client's
24 environment isn't even being used, right?

25 A It has already been used.

1 Q And that carries forward.

2 A And I don't know if they're using it at all. I mean, if
3 you tell me that they're shutdown that day, they're on a
4 holiday, it doesn't change my opinion because that first
5 environment was used to develop the software that is then
6 being provided to other clients for their benefit.

7 Q And in your view that prohibition would carry forward
8 forever. Any other future client that hires Rimini, Rimini
9 can never use that work product again.

10 A My understanding is that they need to develop it in the
11 environment of the client where it's being used, not in some
12 other client's environment.

13 Q Let's turn to issue number 6 which concerns Rimini's 1099
14 update that Rimini e-mailed to Easter Seals on January 3rd,
15 2019, and whether it's a derivative work. Do you recall that
16 issue?

17 A Yes. It would be helpful if you could remind me what the
18 names of the specific files were.

19 Q Sure, be happy to. It is ris1099M.sqr and rsi1099I.sqr.

20 A Thank you, counsel.

21 Q And this relates to PeopleSoft, right?

22 A That's correct, yes.

23 MR. VANDEVELDE: If we can bring up tab 5, which
24 is her opening report, paragraph 84, please.

25

1 BY MR. VANDEVELDE:

2 Q You wrote about six lines down,

3 "A derivative work results when Rimini
4 modifies or extends PeopleSoft environments through
5 new updates extending the features and functionality
6 of the existing PeopleSoft software while relying on
7 the underlying PeopleSoft architectural framework
8 instead of operating independently from the
9 PeopleSoft components on which they rely."

10 Do you see that?

11 A I do see that, yes.

12 Q And that understanding or that definition, that was given
13 by Oracle's counsel?

14 A They gave me guidance in that, yes.

15 Q And their guidance was that -- what we see here in
16 paragraph 84?

17 A Yes, that there has been cases where this type of
18 extension has been adjudicated before and found to be a
19 derivative work.

20 Q And you applied this definition in your work in this case
21 and in Rimini II, frankly, correct?

22 A That is correct.

23 Q Now, you said yesterday that whether a program operates
24 with one platform or multiple platforms makes a difference
25 about whether something is a derivative work. Do you remember

1 that?

2 A I think you're mischaracterizing my testimony slightly.

3 Q Oh. Okay. Sure.

4 A I said that that was an example with respect of one of
5 the ways one can distinguish, you know, whether a particular
6 piece of software is a derivative work.

7 I don't think I said that that's the only way, or
8 that that's the only test that could be applied.

9 Q Oh, yeah. I didn't mean to suggest that you said it was
10 the only test.

11 A Okay.

12 Q But why is that even a factor?

13 A I'm not sure what you're asking me.

14 Q Why do you contend that whether a piece of software can
15 run on one platform or many platforms informs whether or not
16 that piece of software is a derivative work?

17 A Well, in the example we were discussing with PeopleSoft,
18 the PeopleSoft environment is portable across multiple
19 platforms.

20 I think you were asking questions that were
21 implying, or at least I understood you to be implying that one
22 should construe the PeopleSoft environment to be an extension
23 of the operating system because the PeopleSoft environment
24 used the functionalities of the operating system and needed to
25 have an operating -- some operating system that it ran on.

1 And I was saying, no, I don't agree with that
2 premise. You know, my understanding of the PeopleSoft
3 environment, one of the things that I used as a distinguishing
4 characteristic is that it's not timed to that operating -- to
5 a particular operating system. So you could run on a UNIX
6 operating system or a Windows operating system for instance.

7 Q So when you say -- well, let me back up.

8 I'm still trying to get at why whether a software
9 program runs on -- can run on one platform or multiple
10 platforms, whether you're contending that that's part of your
11 definition of a derivative work. Is it?

12 A No.

13 Q Okay.

14 A It was an example that I gave, but it was not a part of
15 my definition of derivative work.

16 Q Okay. And you reference in your definition in paragraph
17 84 extending the features and functionality, and yesterday,
18 you testified about whether a program replaces functionality
19 of another program. Do you remember that?

20 A Yes, within that infrastructure.

21 Q Is that a factor -- is that part of your understanding of
22 a derivative work?

23 A When that work also relies upon and cannot run without
24 the original infrastructure, in this case the PeopleSoft
25 environment.

1 If you were to take one 1099 program and replace it
2 with another 1099 program, you are modifying the environment
3 that produces those 1099s, but you're modifying this part of
4 it. You're not creating the work that is independent from
5 that original work but, rather, it's a modification or
6 extension of that work depending on if it's a new report or an
7 existing report.

8 Q Regardless of whether it substantially incorporates
9 protected expression of the original work, correct?

10 A My understanding is that to be true, yes, given the
11 interdependencies of the underlying framework in our
12 hypothetical program.

13 Q And that's the definition you applied in this case.

14 A I think I cite the exact definition earlier in my report,
15 counsel, but that is conceptually a part of that definition,
16 yes.

17 Q Let me ask you if -- you're very familiar with operating
18 systems, correct?

19 A I am, yes.

20 Q And operating systems have file systems as a component of
21 them, correct?

22 A Yeah, typically, they do.

23 Q And a file system is responsible for storing and
24 organizing and saving files on everyone's computers, correct?

25 A A printer operating with the hardware, there may be

1 layers on top of that, but they interoperate with the
2 underlying hardware to effect storage.

3 Q And you're aware that there are replacement file systems
4 out there, right, for the default file system that might come
5 with an operating system, correct?

6 A Sure.

7 Q Okay. So is it your opinion that no matter how novel, no
8 matter how creative, regardless of whether that replacement
9 file system incorporates any expression whatsoever of the
10 underlying operating system, that because it replaces the
11 functionality of the original operating system's file system,
12 that that is an unlawful derivative work?

13 A You packed a lot into that hypothetical, so let me try to
14 unpack it a little bit.

15 First of all, as an absolute, I would not make that
16 statement without looking at the specific facts.

17 Looking at the specific facts of a particular
18 hypothetical replacement, I could conceive that it may be
19 deemed to be an extension or a derivative work of the
20 operating system, and there are other facts where I might find
21 that there was not. I mean, it's too detailed an analysis to
22 do in the abstract.

23 Q But there are replacement functionality, you could write
24 new code that is a replacement functionality that is at least
25 possible, in your view, would not be derivative work?

1 A Without having evaluated it, I would not want to rule out
2 the possibility that I might so find. Just as I sit here in
3 the abstract, that's not a problem that I have either
4 considered or that I really can address fully as I sit here on
5 the stand.

6 I think it would be depending on the specific facts,
7 and to give a blanket opinion while I sit here would just be
8 silly.

9 Q Can you return to paragraph 327 of your report, and
10 towards the bottom, the last sentence of that paragraph, you
11 wrote,

12 "Because this update was specifically
13 tailored to operate only with and modify Oracle's
14 PeopleSoft software, replacing one function within
15 the environment such that the modified system is
16 substantially similar to the Oracle PeopleSoft work
17 but for the modified reporting function, it is my
18 opinion that this update comprises a derivative
19 work."

20 I want be crystal clear. When you say "as
21 applied" there, right, that is the client's environment as
22 modified by Rimini's update, correct? That's what you're
23 saying is a derivative work.

24 A Well, in this particular statement that is what I am
25 saying. I think I've been clear in my report as a whole that

1 my understanding is that the individual file updates may also
2 be derivative works of the PeopleSoft environment as a
3 stand-alone file because of their dependence on that
4 environment for any practical purpose, for any practical use,
5 they can't be used without it, they're just an extension of
6 the environment. But, certainly, once applied to the
7 environment, the environment as a whole is also a derivative
8 work.

9 Q Okay. But the file by itself could also be a derivative
10 work even if it contains no literal or nonliteral Oracle
11 expression whatsoever in your view.

12 A That is my understanding, counsel, based on the guidance
13 that I have been given, and that, as I understand, is based on
14 prior case law that evaluated similar fact patterns.

15 Q You're not a lawyer, right?

16 A That is true.

17 Q So is there any way to write code that is specifically
18 tailored to operate only with and modify Oracle's PeopleSoft
19 software replacing one function within the environment, and it
20 goes on, without it being a derivative work?

21 A Let me make sure I understand you properly.

22 You're asking is there any way to write code that is
23 specifically an extension or modification of the PeopleSoft
24 environment that is not a derivative work of that environment.

25 Q Correct.

1 A My understanding as I sit here is that there is not, that
2 that would be deemed under prior case law to be a derivative
3 work. Again, that's my understanding as a layperson.

4 Q What case law are you referring to?

5 A There were a couple of cases. The one that comes to mind
6 is Newton Newcomb.

7 Q Okay. And did Oracle counsel provide you with that case
8 law?

9 A They provided me background on what the issues of that
10 case were.

11 Q If we could turn to tab 31, which is a demonstrative
12 relating to issue number 6 with these 1099 files to Easter
13 Seals. Do you see it before you?

14 A I do.

15 Q Okay. In the slide there are three boxes. One is --
16 gray boxes. One is labeled "Easter Seals," one is labeled
17 "Other Clients," and that represents some unknown number of
18 other clients. Do you understand that?

19 A I understand that.

20 Q And then there's a box, as with all these at the bottom,
21 that is labeled "Rimini." Do you see that?

22 A I see that.

23 Q And, again, there are some files with red lines in the
24 Easter Seals box, and that represents conceptually Easter
25 Seals' PeopleSoft environment. Do you understand that?

1 A I do.

2 Q And then in the "Other Clients" box, the big gray box
3 representing some unknown number of other clients, there is
4 also a set of files with red lines indicating each of those
5 other clients separate, siloed, PeopleSoft environments. Do
6 you understand that?

7 A Okay.

8 Q And then there are two files, you see them in the Rimini
9 box. They have blue lines of code. One is labeled 1099I.sqr,
10 and one is labeled 1099M.sqr.

11 And, actually, as I look at them, those are both --
12 they should have an rsi in front of each of those file names.
13 Do you see those?

14 A Okay. Sure.

15 Q Okay. And those files, we also see them in the Easter
16 Seals box as well. Do you see that?

17 A I see that, yes.

18 Q Now, you did not offer an opinion in any of your reports
19 or declarations that the ris1099-I and 1099-M files are
20 substantially similar to any Oracle code in the universe,
21 correct?

22 A As I sit here, I do not recall having done so, so if
23 that's your representation, I'll take it as accurate.

24 Q Well, I'm asking.

25 A I just don't remember. There have been six reports over

1 several years. I don't remember ever having done that
2 comparison.

3 Q Okay. If you did it, it would be in your report,
4 correct?

5 A Yes, if I did it, it would be in my report.

6 Q And not that this is an element that will make something
7 a derivative work, but you don't offer any opinion that either
8 of these files was created with PeopleTools or PeopleSoft
9 tools, correct?

10 A I can offer the opinion that they incorporate the
11 functions of PeopleSoftTools because of the SQC inclusions
12 that they contain because I'm familiar with this file.

13 Whether they were created within PeopleTools
14 environment or outside that environment in a text editor, I
15 know it's been Rimini's representation that they were created
16 on Rimini's systems so, if that is in fact true, then they
17 wouldn't have been used -- or wouldn't have been typed in
18 through the PeopleSoft tools.

19 Q Okay. And as you reference #includes again. If that
20 happened, that would all be on the Easter Seals environment,
21 correct?

22 A Well, the inclusion of the #includes in the code would
23 have been done at the time the code was written, wherever it
24 was written, but the actual use of that code would have
25 happened on that PeopleSoft environment or whatever

1 environment the software was being run on.

2 Q You didn't offer or disclose any opinions on whether the
3 update for Easter Seals was developed in Easter Seals'
4 environments, did you?

5 A I don't believe so, No.

6 Q And you didn't offer any opinions on whether the
7 update -- the 1099 update for Easter Seals was tested in
8 Easter Seals' environment, did you?

9 A Again, I don't recall that specific opinion being
10 offered.

11 Q And you didn't offer any opinion on when the development
12 occurred, correct?

13 A For this specific update that was shipped to Easter Seals
14 or the program as a whole?

15 Q The update for Easter Seals.

16 A No, I don't recall doing so. As you know, this was an
17 older program that had been around for awhile, so --

18 Q Are you aware that the update for Easter Seals was
19 developed before the injunction took effect?

20 A I would want to look at the date. I don't recall the
21 specific date, counsel, I'm sorry.

22 Q If we could pull up --

23 A It should be in the program header probably.

24 MR. VANDEVELDE: Okay. Let's pull up tab 32,
25 briefly, the first page, pre-admitted.

1 BY MR. VANDEVELDE:

2 Q And do you see there about 40 percent of the way down,
3 February 28th, 2018, is the last modification in this
4 modification log? Do you see that?

5 A I see that.

6 Q Okay. So that is, what, eight to nine months before the
7 injunction took effect?

8 A Seven or eight months, I think, yeah.

9 Q Okay. Seven or eight months. Okay.

10 If we could turn to tab 33 briefly which has also
11 been pre-admitted -- sorry, it's Oracle Exhibit 41, and for
12 the record, the previous one we looked at was Oracle
13 Exhibit 40.

14 So we're now looking at Oracle Exhibit 41 that's
15 been pre-admitted. This is the 1099 file for Easter Seals --
16 or that Easter Seals received.

17 Do you see at the last entry of the modification log
18 it's dated March 22nd, 2018?

19 A I see that, yes.

20 Q And that's a number of months before the injunction took
21 effect, correct?

22 A Before that November date, yes.

23 Q Okay. If we could -- hold on one second.

24 No, we can do it with this one.

25 Okay. So below the highlighted text here, you see

1 that #include?

2 A I see that, yes.

3 Q And it says, "#include seten" -- that's set environment,
4 right?

5 A Yeah. That's set environmental -- or allows you to set
6 some of the environmental parameters.

7 Q Okay. Are you contending that it's unlawful for Rimini
8 to #include the seten.sqc under the injunction?

9 A I would not take that position. I mean, this is evidence
10 that it's used in the PeopleSoft environment. But if it was
11 done under color of one client's license for that client, I
12 would see nothing inappropriate in it.

13 Q Okay. So I'm just -- yeah. If Rimini writes a file and
14 includes a line that is #include for setenv.sqc, you would not
15 contend that violates the injunction, correct?

16 A Again, so long as all of the other requirements of the
17 injunction were upheld, then, yeah.

18 Q If we could turn to your demonstrative slide 35, please.

19 Now, I know you talked about this in connection with
20 JDE, I believe; is that right?

21 A I think that we used this example in my JDE discussion,
22 yes.

23 Q Okay. I think it's useful, but we'll see, to talk about
24 here with respect to #include. So when the #include -- so let
25 me back up.

1 When that file, that Rimini written ris1099 file is
2 sent to Easter Seals and it's tested, the #include
3 incorporates the Rimini -- the Oracle file referencing that
4 #include file into, and then compiles it, right?

5 And does this diagram kind of demonstrate the
6 process for #include that you talked about yesterday?

7 A Yes, it would be #include, or the copies we talked about
8 yesterday. It's pretty much the same process.

9 Q Okay. And then this is where I wanted to get to. All of
10 this on this slide, the source code, the including, the
11 pre-compiling, the expanding, all of this, this is all
12 happening in the client's separate environment, correct?

13 A For these specific steps, that would be correct, yes.

14 Q And there's no evidence and -- that any of the pound
15 including or copying or merging or pre-compiling or expanding
16 code, all the things we see here on this slide, none of that
17 was on Rimini's systems, correct?

18 A With the exception of the one example we discussed
19 yesterday, the dot.lis file where the -- on one of the
20 pre-compiler optional outputs is that listing, and that
21 listing was sent back to Rimini.

22 But in the case of this specific update, these
23 activities would have taken place on a particular client's
24 environment wherever the program was being compiled at that
25 time.

1 Q And when you testified about the #include and the merging
2 of the Oracle code with the Rimini code and the
3 pre-compilation expanding, you didn't tell the judge that that
4 was all happening in the client's system, did you?

5 A I don't recall if I said anything about that or not
6 yesterday.

7 Q You didn't tell the judge that all of those steps are
8 only within the client's systems, not Rimini's.

9 A Well, they have it wherever it's being compiled, but,
10 yes, because Rimini doesn't have a PeopleSoft environment, it
11 would not be happening on Rimini's system. I'll be very clear
12 with that.

13 Q But you did testify that the updates that result from
14 these files substantially incorporate Oracle expression. But,
15 again, that just means the modified client environment,
16 correct?

17 A Well, the object code itself, even for this single file,
18 now contains -- after the compilation now contains substantial
19 portions of Oracle expression, and once that modified file is
20 placed in the operating environment of a particular client,
21 that client's environment has now been amended to include that
22 change as well.

23 Q But that all happens, even the object code, it's all in
24 the client environment, correct?

25 A For each client, yes.

1 MR. VANDEVELDE: Okay. Thank you.

2 You can take this demonstrative down, please.

3 BY MR. VANDEVELDE:

4 Q Let's go to Issue Number 5 which concerns Rimini's
5 rspcmpay.cbl file. Do you recall that issue?

6 A Yes.

7 Q And I may refer to it as rsp com pay.

8 A That's fine.

9 Q Does that make it easier to say?

10 A It is a little easier to say that way.

11 Q And .cbl is a Cobol file, right?

12 A Correct.

13 Q You opined in paragraph 189 of your opening report that
14 Rimini copied substantial portions of the PeopleSoft file,
15 psptarry.cbl, or dot cbl, into the Rimini file, correct?

16 A Correct.

17 Q And in comparing those files, you used a comparison tool
18 called ARAXIS MERGE, I believe?

19 A That is one of the comparisons I performed, yes, and it's
20 how I did the side-by-side display.

21 Q Okay. And you have done file comparisons using the same
22 tool in other cases, correct?

23 A For probably the last 10 or 15 years, yeah.

24 Q And a court in a recent copy infringement action actually
25 said they were unreliable, correct?

1 A I think you're relating -- you're referring to the *Drop*
2 *Zone* matter.

3 Q I'm just asking you if a court has previously found that
4 the output of these tools he did not find reliable.

5 A I don't remember the Court's exact ruling in that. It
6 was in the context of some exhibits that I had prepared before
7 the attorney I was working with fell ill.

8 And, subsequently, those were submitted by the new
9 attorneys, but after the cutoff date for the submission, and I
10 don't remember the exact wording of the Court's order with
11 respect to that.

12 Q Okay. You testified that the two files I'm going to --
13 the *rsp com pay* and *psptarray* file, that you compared them.
14 And I think you said they were a one-third matched?

15 A Roughly 30 percent of the lines is what my recollection
16 is.

17 Q Okay. And was that based on your unique, normalized line
18 set analysis?

19 A Yes, that was before any filtering to apply any
20 constraints or anything. So that was just a gross number of
21 the number of lines from the Rimini file that were found to be
22 present in the Oracle file, or the percentage of lines in the
23 Rimini file that were found to be present in the Oracle file.

24 Q Would you agree that in assessing substantial similarity
25 the relevant question is whether a substantial portion of the

1 protectible material in Oracle's work was appropriated, not
2 whether a substantial portion of Rimini's work was derived
3 from plaintiff's work?

4 A That is not my understanding, counsel.

5 My understanding was is that if I copy one chapter
6 out of your 20 chapter book, that that is still a substantial
7 similarity even if my book is shorter than yours.

8 Q So you calculated a percentage for how much Rimini's file
9 allegedly matched Oracle's?

10 A Correct.

11 Q And you used what you referred to as unique normalized
12 lines to calculate that?

13 A That is my recollection. It would state in my report, I
14 think, exactly how that number was derived.

15 Q And that involves creating two sets, correct?

16 A Two sets of lines and performing line matching between
17 them.

18 Q And unique lines, correct?

19 A There's several different ways to do that normalized line
20 matching, unique or not unique.

21 In that specific instance, I would want to
22 double-check what I said in my report was the process because
23 I just don't recall. That was some time ago.

24 Q So in footnote 187 of your report, you wrote,

25 "All line matching comparison percentages

1 herein are based on unique normalized lines."

2 Does that refresh your recollection?

3 A Okay. Yes, it does, thank you.

4 Q So it's based on unique normalized lines.

5 So you created a set of all unique lines in the
6 Rimini file, correct?

7 A Correct.

8 Q And so if the Rimini file had five lines that were the
9 same, there would only be one in the set, correct?

10 A Correct.

11 Q And that's the normalized part of your analysis, right?

12 A Well, the normalized also includes, as I mentioned
13 yesterday, excluding white space differences and case
14 differences, upper case, lower case, so that the comparison is
15 just the textural elements of the code.

16 Q And there's no concept of ordering or sequence in this
17 set of lines from the Rimini file, correct?

18 A Not in that initial normalized line match, that's
19 correct. Later when I use ARAXIS --

20 Q We're only talking about the normalized line sets right
21 now.

22 And then you created a similar set of the unique
23 lines from the Oracle file, correct?

24 A Correct.

25 Q So if the Oracle file had five lines that were same,

1 there would only be one in that set.

2 A Correct.

3 Q And then you essentially eliminated all structure and
4 sequence and organization because a set doesn't have those
5 things, correct?

6 A Right. The normalized line match is a first step to help
7 you identify pairs of files that you may want to scrutinize
8 farther.

9 Q And you didn't filter out any lines from the Oracle
10 normalized line set that were non-expressive, did you?

11 A In that first step, no.

12 Q So a blank line would have been in there?

13 A There would be one blank line in there and one of those
14 flower box lines, assuming all the flower boxes are the same
15 length, et cetera.

16 Q A filler line?

17 A Sure.

18 Q A main exit line?

19 A If that was one of the lines, yeah.

20 Q And then you compared the two sets and determined how
21 much they overlap regardless of structure, sequence,
22 organization, correct?

23 A In that initial step, that's correct, yes.

24 Q Okay. And that matching statistics -- statistic, that
25 roughly -- I think you said roughly 32 percent in your report,

1 that's how much of the normalized lines in the Rimini file
2 match the Oracle file, correct?

3 A Correct.

4 Q It's not the reverse, what percentage of the Oracle file
5 was supposedly matching normalized lines in the Rimini file,
6 right?

7 A That is correct, counsel.

8 Q And you don't know what that second percentage is, right?

9 A I don't know as I sit here. It's easily derived, but I
10 don't know as I sit here.

11 Q Okay. Let's turn to Issue Number 7 which is regarding
12 JDE software source code.

13 A I thought you said tab 7, sorry.

14 Q Oh, sorry. Issue 7 which is regarding paragraph 8 of the
15 injunction and the phrase "J.D. Edwards software source code."
16 Do you recall that issue?

17 A Yes.

18 Q You testified that, you know, in all your experience you
19 hadn't heard the term open and closed code. Do you remember
20 that?

21 A Outside this litigation.

22 Q Yeah, outside this case.

23 A Yeah, correct.

24 Q So putting aside the label, you have obviously heard of
25 accessible human-readable text files that have code in them,

1 right?

2 A Yes.

3 Q Of course, right?

4 A Of course, yes.

5 Q Okay. And you are also aware and are familiar with files
6 that are a form of code that are compiled, or object, or
7 obfuscated code, correct?

8 A Yeah. Obfuscated is different than compiled or object
9 code, but I'm familiar with all of those tools and have
10 actually written about them somewhat -- or all of those
11 concepts rather.

12 Q Okay. So regardless of whether the labels open code and
13 closed code, you are familiar with the underlying concepts,
14 right?

15 A That computer software exists in two dual forms as source
16 code and as the binary code, and possibly a third, an
17 obfuscated form of either of those.

18 Q Have you ever personally licensed JDE?

19 A I have not.

20 Q Have you ever personally installed it?

21 A I don't believe so.

22 Q You don't offer any opinions in any of your reports or
23 declarations regarding how, upon installation, the files and
24 data comprising the JDE environment are structured, do you?

25 A I think I talk about that briefly in one of my reports

1 where I'm describing the operating environment that's used
2 with EnterpriseOne, and contrasting it to the operating
3 environment for JDE Enterprise World, because I talk about the
4 platforms they're on, and whether the code is accessed in
5 those platforms.

6 But, I'm not sure if your question falls within the
7 scope of that or not. But I did talk about the way in which
8 the code is stored differently on the two versions.

9 Q Okay. Well, maybe I asked a bad question. I'll ask it
10 differently.

11 Are you aware that Oracle provides its JDE licensees
12 with certain code that, when the licensee gets it, is in
13 accessible human-readable format?

14 A Did you say inaccessible or accessible, just to be clear
15 for the record.

16 Q Yes. Accessible human-readable.

17 A Yes. I am aware that they provide source code to their
18 clients as a part of the delivery as well as other components
19 which are object code only.

20 Q So it's text, those components, correct?

21 A The source code components are text-based, I mean, in a
22 computer language, yes.

23 Q And they can be viewed in a text editor, some kind of
24 text editor, correct?

25 A Certainly they could be viewed with at least some text

1 editors.

2 Q And they can be modified?

3 A In the J.D. World environment, they can be viewed and
4 modified in a text editor.

5 Because of the way they're stored in the JDE
6 Enterprise environment, you would have to first use OMW to
7 extract them amount, and then once extracted, you could view
8 them in a text editor.

9 Q All right.

10 A Just to be clear.

11 Q But they could be modified.

12 A They can be modified, yes.

13 Q And they can then be compiled, correct?

14 A Yes.

15 Q And then are you also aware that Oracle -- when someone
16 pays Oracle for a J.D. license and they get the JDE software,
17 that some of the components of that software are not easily
18 accessible and not in a human-readable form?

19 A I'm sorry. I was stifling a sneeze. Would you just
20 repeat that question.

21 Q Sure, sure.

22 So you're also aware that when a JDE licensee
23 obtains the software they've purchased from Oracle, that some
24 of the components of that software of JDE is not easily
25 accessible and not human readable.

1 A Right. There are components of J.D. Edwards, whether
2 it's World or Enterprise, that are shipped only as object
3 code, and other components that are shipped, the application
4 parts that are shipped, is source code.

5 Q So it could be compiled or executable code?

6 A The source code could be, and the executable code, of
7 course, can't be compiled because it's already compiled,
8 but --

9 Q No, I'm saying those not easily accessible, not
10 human-readable components, could be the compiles code or the
11 executable code, correct?

12 A Sure.

13 Q Okay. You testified yesterday that Rimini's reading of
14 paragraph 8 of the injunction would not make sense because
15 closed code isn't provided to licensees. Do you remember
16 that?

17 A Well, yeah, the reading as that closed code being a form
18 of source code, specifically, doesn't make sense because there
19 is no source code provided for that closed portion of the
20 code.

21 Q But they're provided with that source code, just in a
22 compiled form, correct?

23 A Once it's compiled it's no longer a source code in the
24 languages involved here. Do you understand the distinction?

25 Q No, I understand the difference.

1 A Okay.

2 Q But what they're provided with is source code that has --
3 they're provided with the underlying -- the compiled version
4 of the underlying source code, correct?

5 A They are provided with the compiled object code for some
6 portions of the system, and no source code is provided for
7 those portions.

8 And then they are also provided other portions of
9 the system, which are the application, which are provided in
10 source code format for their customers.

11 So when you say they're provided with the compiled
12 source code, while it's true there must have been source code
13 somewhere that somebody had for the object code only
14 components, there was no provision of source code for those
15 object code only components.

16 Q Because it's in compiled form.

17 A Correct.

18 Q You're aware that the Oracle license and service
19 agreement has a restriction against decompiling and reverse
20 engineering?

21 A Yes. That's pretty standard in software that's
22 distributed, object code only.

23 Q And you're aware that JDE Legacy licenses have the same?

24 A The ones I have examined have all had that provision.

25 Q Before this case, isn't it true that your only experience

1 with JDE was in the context of work that you did for one
2 client when you were doing custom software development?

3 A There is one client over the years that I can recall that
4 I did some software custom development and some systems
5 modifications, you know, of just the configuration of the
6 system as well.

7 And I may have worked on others, but it would have
8 been so long ago that I just really don't recall if there were
9 others or not. I remember one specific instance because it
10 was a rather large engagement.

11 Q And it was when you were doing custom software
12 development?

13 A I was doing both software development and system
14 integration tasks for that client, as well as performing
15 operating system maintenance for that client.

16 I was sort of assistive generally, if you will, so
17 installing software and also doing some custom development.

18 Q And this was in the 1990s?

19 A Late 1990s, I think, yeah.

20 Q So more than 20 years ago.

21 A It was a significantly long time ago, yeah.

22 Q Okay. And then between then and this case, you didn't
23 have any other experience with JDE, correct?

24 A That is correct, yes.

25 Q Who was the client?

1 A That was while I was working for an engagement for
2 Tektronix in Beaverton, Oregon, and it was in relation to a
3 company that they had purchased, and I was doing mostly
4 software development and data extractions so that they could
5 do some extrapolations on personnel changes as they merged
6 their division with the company they had purchased.

7 Q Yeah, I was just asking for the name.

8 Okay. So Tektronix, I think you said?

9 A Yeah, T-e-k-t-r-o-n-i-x.

10 Q Do you know when JDE EnterpriseOne was released?

11 A I want to think that the original JDE product was
12 released a couple of decades before that, or a decade and a
13 half before that. I don't remember specifically JDE
14 EnterpriseOne, when they were released.

15 Q Are you aware that it was released in approximately the
16 year 2000?

17 A That wouldn't surprise me because I know it came much
18 later.

19 Q Okay. So if it did, then you have no experience prior to
20 this case with JDE EnterpriseOne, correct?

21 A I do not recall any experience with EnterpriseOne. It
22 was on AS-400 platform that I was doing the JDE work, and so I
23 believe it would have been World.

24 I mean, it's been long ago. I don't specifically
25 remember even the version.

1 Q And there's been lots of versions of JD EnterpriseOne,
2 the 8 series, the 9 series, and you have no experience with
3 any of those versions of J.D. EnterpriseOne, correct?

4 A Beyond the Oracle trainings that I have done on their
5 system, no, no direct experience working with those products.

6 Q And you're aware that Object Management Workbench, the
7 tool, was released as part of EnterpriseOne, correct?

8 A I'm aware that, Yes.

9 Q So you had no experience, prior to this case, with any
10 Object Management Workbench tool, correct?

11 A As far as I can recall, I believe that to be true.

12 Q And so what was the name, do you think, of the J.D.
13 Edwards software that you used in the late '90s?

14 A Well, I believe that it would have been JDE World because
15 it was on an AS-400, and I do not recall any interaction with
16 OMW.

17 And Tektronix was my client on and off over a period
18 of almost three decades, but as best I can recollect when that
19 work took place, it was in the late '90s.

20 Q And you performed maintenance in the context of work for
21 one of your consulting clients when you were doing custom
22 software development, correct?

23 A That is true.

24 Q Okay. And you were working -- is that client,
25 Tektronix -- am I saying that right?

1 A Uh-huh.

2 Q You were Tektronix's consultant, correct?

3 A That is true.

4 Q So you were essentially a third-party support provider to
5 Tektronix, right?

6 A I believe in that particular engagement I was. I mean, I
7 was an employee of Tektronix twice over the years and a
8 consultant probably two-dozen times beyond that, and as best I
9 recall this particular time frame, it was during when I was a
10 consultant to them as opposed to an employee.

11 Q Did you install their JDE software?

12 A I may have installed a patch for it, but I don't -- my
13 principal work was with respect to actually working with some
14 configuration changes, some data extracts, and developing some
15 customized reports.

16 Q Did you look at any human-readable code portions of
17 Tektronix's JDE software?

18 A I'm sure that I must have during that timeframe, yes.

19 Q And looking at that code would make copies, correct?

20 A In memory, and to the extent that I checked them out to
21 make any changes, I would have made changes, yeah.

22 Q You'd agree that modifying or making changes to a code
23 file of JDE necessarily entails copying the file in some form,
24 correct?

25 A Yes.

1 Q Are you aware that in 2011 Oracle conducted an audit of a
2 third-party support provider named Spinnaker?

3 A I have heard that company mentioned in the context of the
4 litigation. I think you asked me about it at one of my
5 depositions.

6 But I really don't know anything substantive about
7 what was audited or how the audit was conducted or what the
8 relationship between the parties was.

9 Q And it's not on your materials considered list, right,
10 anything relating to Spinnaker?

11 A I don't believe so.

12 Q Okay. So Oracle's counsel didn't provide you any
13 information about Spinnaker, did it?

14 A Only just the reference that they existed when I asked
15 about it, when I saw it in one of the briefs, but I didn't
16 review any -- independently review any Spinnaker-related
17 materials.

18 Q So they didn't provide you the declaration of Spinnaker's
19 CEO describing its processes?

20 A I don't recall having seen that, no.

21 Q And they didn't provide you the deposition testimony of
22 Oracle's 30(b)(6) witness in Rimini II regarding Spinnaker?

23 A I do not recall seeing -- what was the deponent's name?

24 Q Buffy Ransom.

25 A Not ringing any bell.

1 Q And Oracle's counsel didn't provide you the letter that
2 Oracle's assistant general counsel wrote to Spinnaker about
3 Spinnaker's processes, did they?

4 A I don't believe I've seen that either.

5 Q So you didn't consider any of those things relating to
6 Spinnaker in forming your opinions in this case.

7 A No.

8 Q Are you aware that the audit included Oracle reviewing
9 Spinnaker's support processes?

10 A I have seen that in the briefs for this case.

11 Q Are you aware that Oracle's associate general counsel was
12 involved in that audit?

13 A I don't remember specifically who the players were, I'm
14 sorry.

15 Q Are you aware that Oracle brought in outside counsel for
16 the audit?

17 A Again, it hasn't been a focus of anything for me in this
18 case, and so I have only the sketchiest details.

19 Q And so you're not aware that the audit was actually an
20 onsite visit to Spinnaker.

21 A I don't recall that, No.

22 Q And so you're not aware that as a result of that audit
23 Oracle's general counsel confirmed in a letter that
24 Spinnaker's processes do not violate Oracle license
25 agreements?

1 A Again, I saw that when I read the briefs that were
2 associated with this case, but I -- in one of the briefs, I
3 think. I'm sure it was from Rimini.

4 But I don't have the background materials, and have
5 not reviewed the background materials, so I really can't
6 address anything about the scope of that audit.

7 Q So Oracle's counsel chose to not provide you those
8 materials.

9 A I don't think they were relevant to my analysis of the
10 injunction matters here because what the judge enjoined is
11 what the judge enjoined here, and what happened in some other
12 past thing, I -- I don't think would be relevant for me to
13 consider, so it doesn't surprise me that they didn't provide
14 me those materials.

15 Q And you didn't ask for them?

16 A I did not. Again, my focus here was on Rimini's conduct
17 and what the evidence shows with respect to this specific
18 injunction.

19 Q You're aware that the Court has held that the injunction
20 only covers unlawful conduct, right?

21 A That is my understanding, yes.

22 Q So you're not aware of Ms. Ransom's testimony as Oracle's
23 corporate representative on behalf of Oracle International
24 Corporation and Oracle America, correct? You've never seen
25 her deposition transcript?

1 A I don't believe I have seen her deposition transcript.

2 I mean, my awareness of this is largely from the OSC
3 briefs that were filed here and just -- when I was asked about
4 it at my deposition in the other Rimini matter I believe it
5 was, I asked counsel what that was all about, and they said it
6 was -- it had to do with Oracle and another party and wasn't a
7 part of this litigation.

8 Q You're aware Spinnaker is a third-party support provider
9 that provides JDE support, right?

10 A I am aware that they support one of the products. I
11 don't remember, as I sit here, which one specifically it was.

12 Q Okay. Are you aware that Ms. Random testified about
13 Oracle's audit of Spinnaker processes?

14 A Only to the extent that I have seen reference to it in
15 the briefs.

16 Q And are you aware that she testified under oath on behalf
17 of Oracle that Spinnaker provides JDE updates?

18 A Again, as I sit here, I don't recall specifically which
19 product. I remember that she testified that Spinnaker
20 provided updates for one of Oracle's products.

21 Q Okay. And are you aware that she testified that
22 Spinnaker provides JDE, quote, "tax and regulatory updates"?

23 A I do remember that whichever product she was talking
24 about did involve tax and regulatory updates.

25 Q And that Spinnaker also provides JDE custom code

1 solutions.

2 A I am drawing a blank on whether I saw -- or whether I
3 recollect -- I mean, I don't recollect that specific statement
4 as I sit here, but I have no reason question it if that's your
5 representation, counsel.

6 Q Are you aware that Ms. Ransom testified under oath on
7 behalf of Oracle that Spinnaker's JDE custom code solutions
8 may take the form of source code changes?

9 A Again, I remember that with respect to whatever product
10 she was talking about, there was mention that they could
11 include source code changes.

12 Q And are you aware that Ms. Ransom, on behalf as Oracle,
13 as Oracle's corporate representative, stated under oath that,
14 quote,

15 "Oracle viewed Spinnaker's support policies
16 as respectful of and noninfringing of Oracle's
17 nonintellectual property"?

18 A I remember the "respectful of" phrase because I thought
19 that was an interesting turn of words.

20 Again, which product, I don't specifically recall,
21 but I remember that -- from reading these briefs that her
22 testimony included some statement of respectful and --

23 Q And noninfringing, too, right?

24 A I don't remember the exact wording, I didn't memorize it,
25 counsel, but noninfringing, or acceptable, or whatever term

1 was.

2 Q Are you aware that Ms. Ransom on behalf of Oracle, as
3 Oracle's corporate representative, stated under oath that
4 Spinnaker's JDE support processes, including its, quote,
5 "custom code solutions and," quote, "source code changes do
6 not violate Oracle license agreements"?

7 A I think I recall seeing that in the briefs, counsel.

8 Q But don't you think --

9 A I didn't read her deposition nor her -- I've only seen
10 the materials that I've seen in this brief so forgive me if I
11 can't answer some of these questions, but --

12 Q Wouldn't you think it's relevant what Oracle's own
13 corporate representative and Oracle's associate general
14 counsel thinks about the JDE support processes of a
15 third-party like Spinnaker?

16 A Not having any understanding about the relationship of
17 Spinnaker to Oracle, and whether they were a business partner
18 or a preferred provider, or anything else, and not having any
19 understanding about what Spinnaker's specific practice was, do
20 they do one change that they sent to many customers, or did
21 they just go into one customer site and do it for that
22 customer, and go to another customer's site and do work for
23 that customer, you know, not being -- not having any
24 understanding of that, I don't see how it could possibly be
25 relevant here.

1 Q And we're not talking about cross-use, we're just talking
2 about J.D. Edwards software source code.

3 You don't think that it's relevant that when
4 Oracle's corporate representative testifies under oath that
5 Spinnaker can do custom code solutions and source code changes
6 and it does not violate Oracle's license agreements, you don't
7 think Oracle's own lawyer's comment and own corporate
8 representative's representation is relevant to your analysis
9 of whether -- what the Court intended by the phrase source
10 code changes -- or, sorry, J.D. Edwards software source code?

11 A I really don't, counsel, because that's a different set
12 of facts.

13 And, you know, we are here in this courtroom after
14 many years of litigation and after a judge has issued a ruling
15 for an injunction, and I would not presume to say that the
16 judge's injunction, on its face, would be diluted by a set of
17 facts that happened at another point in time between different
18 parties and another set of facts. I mean, I think that would
19 be really presumptuous of me, counsel.

20 Q You're aware, again, that the judge has held explicitly
21 that the injunction only reaches unlawful adjudicated conduct,
22 correct?

23 A That is my understanding.

24 Q Okay. So if something is unlawful, it's not just
25 unlawful for one person, it's unlawful for other people, too,

1 correct?

2 A I think that depends on the contractual relationship.

3 If it's -- for instance, if I violate a license,
4 it's unlawful for me, but you might have a different license,
5 and if I don't know what that license is, I can't say that
6 your behavior and mine should be judged the same.

7 Q Okay. Let's put aside the license issue. Spinnaker is a
8 third-party support provider for JDE. Do you understand that?

9 A Well, we've been talking about it for a bit here now, so,
10 yes.

11 Q Okay. So if the injunction only covers unlawful conduct
12 as to Rimini, a third-party support provider, then it would be
13 unlawful for any third-party support provider, correct?

14 A Again, I'm assuming that some of the judgment -- and
15 remember, I'm not a lawyer here, but I'm assuming that what is
16 lawful under one license to one licensee and isn't under
17 another, would color my answer to that.

18 Q Well, that's --

19 A If I'm allowed to -- if I'm a licensee of your creative
20 song and I'm allowed to perform it, that doesn't mean somebody
21 else can perform that song, too.

22 And so I don't know enough about the relationship of
23 these parties to know if it's relevant or not, counsel, and I
24 don't know what "legal" would be in the context of these
25 disparate matters because they're -- I don't know what the

1 fact pattern was in Spinnaker.

2 Q And so you don't know whether they had a license, right?

3 A I don't know whether they had a license. I don't know
4 whether they had permission. I don't know -- you know,
5 obviously, Oracle did an audit.

6 I mean, from what I have seen in the briefs, at
7 least, the results of that audit was that Oracle said what
8 they were doing was okay, but I knew nothing else about the
9 fact pattern here, about what exactly they were doing, or what
10 the relationship between the parties were.

11 Q Okay. So if Spinnaker's support for its clients is
12 pursuant to the same JDE licenses those clients have that
13 Rimini does for its own JDE clients, then you would agree,
14 then, the ramifications of your testimony is that Spinnaker
15 would be acting illegally, too, correct?

16 A Again, absent some other agreement between the parties or
17 some other relationship, some other contract that I know
18 nothing about, that might be true. I mean, I just don't have
19 enough facts to offer an opinion on that, counsel.

20 Q So if there are many third-party support providers that
21 are all performing JDE support pursuant to the same -- for the
22 their clients who have the same JDE licenses that Rimini's
23 clients do, that entire industry of third-party support would
24 be now acting illegally.

25 A I wouldn't necessarily make that extrapolation since I am

1 aware that there are many forms of JDE support that do not
2 involve the modification of source code.

3 Q And I'm saying that do the same things that Spinnaker
4 did, which is make custom code solutions and source code
5 changes and that you contend Rimini does. They would now all
6 be acting illegally.

7 A I think that's for the courts to decide, counsel.

8 Q Now, you testified about Object Management Workbench a
9 bit during your direct testimony. Do you remember that?

10 A Yes.

11 Q Okay. If we could put up slide 37 of your demonstrative,
12 I guess it was. Do you remember this slide?

13 A I remember this slide, yes.

14 Q And I just want to be crystal clear here. All of the
15 things we're looking at, this is in the client's system,
16 right?

17 A It could be. I should have noted with the other one we
18 looked at as well, if you were doing the checkout remotely,
19 you might be drawing that back to a remote location.

20 So, in theory, though, this would be -- the
21 development client would be hooked to the development server,
22 and in a normal instance that might be, you know, somebody in
23 the same building or in the same facility or in the same
24 company.

25 But, I should have pointed out when we were talking

1 before that to the extent that a development client was
2 checking out remotely, that development client could be
3 somewhere else.

4 Q But you didn't -- you didn't offer any opinion about
5 that, right, about where the development happened?

6 A With respect to the instances that we have discussed in
7 this matter, that's true, counsel.

8 Q And I know it's probably not actually JDE code, but that
9 file in the middle, under the label Check Out, that is your
10 representation of what you contend is JDE source code,
11 correct?

12 A Yeah, it just means this is a source code file being
13 checked out to some development client.

14 Q Okay. So presumably there is a copy of what you contend
15 is source code on the development server, and then there's a
16 copy sent to the development client, correct? And that's the
17 checkout process?

18 A Correct. And this is in J.D. Edwards EnterpriseOne, so
19 you would check it out from the repository to where you would
20 be working on it. It could physically be the same computer or
21 a different computer.

22 Q Okay. And if we go to the next slide, slide 38, similar
23 slide, this one is about the display of what you contend is
24 JDE software source code, right?

25 A When a source code is displayed, yes, it's displayed on

1 the user's computer for the user to view.

2 Q So what you're saying here is that the mere display of
3 that file causes a copy of what you contend is JDE source
4 code, that creates a copy, right?

5 A In order for the code to be displayed on the user's
6 computer, there would have to be a portion of at least the
7 code that is displayed in memory on the computer and
8 typically, also, a separate copy in their video processing
9 component.

10 Q And so it would be your opinion that a Rimini engineer
11 can't even look at what you contend is JDE source code,
12 correct?

13 A Under the explicit wording of the Court's injunction that
14 involves not creating copies -- you know, shall not copy J.D.
15 Edwards source code to carry out development and testing --
16 under those words I would, as a technical person, understand
17 that to be true, that I was not permitted to view the code
18 because to do so would necessarily create a copy of it.

19 Q So you can't look at it.

20 A That would be, again, my understanding as a person
21 evaluating the Court's injunction from the perspective of a
22 technical background.

23 Q And the previous slide -- I didn't ask, but I will now --
24 a Rimini engineer could not never check out what you contend
25 is JDE source code, correct?

1 A Again, that's my understanding.

2 Just to be clear, I'm not saying that no one could
3 check it's out, and, similarly, I'm not saying that no one
4 could display it.

5 So it would appear to me that this injunction
6 prohibits J.D. Edwards from performing the checkout or from
7 having a copy on their machine where they are displaying it.
8 I don't think it necessarily prevents a J.D. Edwards person
9 from standing at the shoulder of a --

10 Q Well, you're saying --

11 A -- corporate employee.

12 Q -- J.D. Edwards. Are you trying to say Rimini?

13 A I'm sorry. A Rimini, yeah, engineer from standing at the
14 shoulder of an employee, for instance, and assisting them in
15 making some change to the code. It just appears to me that
16 they are not allowed, themselves, to make those copies.

17 Q Okay. So it's your opinion that the Rimini engineer
18 can -- let's just say physically, physically look at the -- at
19 what you contend is JDE source code?

20 A In the -- the Court struck the "shall not access J.D.
21 Edwards source code" in an amendment to the version of the
22 document I'm looking at.

23 So I think from the standpoint, as best I understand
24 it, of standing beside an employee of the company who is the
25 licensee and giving them guidance, I don't see anything here

1 that would prevent that.

2 Q If we could go the next slide, please, and this slide is
3 slide 39 of your demonstrative that you used with your direct
4 testimony, and instead of being about checking out and
5 displaying, this is about the check-in process of the OMW
6 Tools for EnterpriseOne, correct?

7 A Correct.

8 Q And it depicts a -- what you contend is JDE source code
9 in the middle being checked in, and it goes to the development
10 server, correct?

11 A Correct. Once it's checked back in, a copy of the new
12 code is placed on the development server.

13 Q And, again, this is all happening in the client's JDE
14 environment, correct?

15 A Yes.

16 MR. VANDEVELDE: And if we could go to slide 40,
17 please.

18 THE WITNESS: Well, again, with the provision on
19 that last slide, assuming that the machine it was checked out
20 to as a development environment was on the client's
21 environment.

22 So if it was somewhere else, you know, if that
23 copy had been checked out to a remote location or something,
24 then it may not be in the client's environment.

25 BY MR. VANDEVELDE:

1 Q Yeah. You're not offering any evidence that any file was
2 checked out to a remote location other than a client's system,
3 correct?

4 A Not in the matter before the Court here.

5 Q Okay. So slide 40 of your demonstrative depicts three
6 development environments. One's called development environ --
7 sorry, three environments, one called Development Environment,
8 one called Test Environment, and one called Production
9 Environment.

10 And this slide relates to the promotion process of
11 JDE -- what you contend is JDE source code, correct?

12 A Of the promotion between environments, correct.

13 Q And all of these environments are on the client's
14 systems, correct?

15 A That would be the normal case, yes.

16 Q So if there's any copies being made, it's being made on
17 the client's systems, correct?

18 A During this promotion, yes, the copies would be from one
19 client environment to another client environment.

20 Q And it's your opinion that Rimini can't promote what you
21 contend is JDE source code, correct?

22 A That is my understanding, and my understanding of the
23 injunction ruling, yes, that they're not permitted,
24 themselves, to make that copy.

25 Q So putting these slides together, these four slides we've

1 just gone through, 37, 38, 39, and 40, which concern checking
2 out, displaying, checking in, and promotion, all of those
3 involve copying of what you contend is JDE source code in the
4 client's environment, correct?

5 A In this scenario here, where we have no other
6 environments, it would be in the client's environment, yes.

7 Q And all of those steps are necessary in the course of
8 developing JDE updates involving what you contend is JDE
9 source code, correct?

10 A For those updates specifically that involve source code,
11 that would true. For other types of updates that are
12 configuration or data changes, the path is a little bit
13 different.

14 Q So for those types of changes, meaning ones that involve
15 looking at, even, what you contend is JDE source code, that is
16 illegal.

17 A I'm not rendering an opinion on legality. I'm rendering
18 the opinion that it appears to be prohibited under the Court's
19 injunction.

20 Q And the injunction says that it only reaches unlawful
21 conduct again, correct?

22 A It does say that, yes.

23 Q OMW is the tool that Oracle itself created and gives to
24 licensees to do all these things, correct?

25 A Yes. Specifically, it is the tool for EnterpriseOne to

1 do these things.

2 Q Can you use Oracle's own tool that it provides to its
3 customers without what you contend is JDE source code being
4 copied?

5 A I'm sorry, ask that again?

6 Q Is it possible to use the OMW tool that Oracle itself
7 creates and gives to its customers, can you use the tool
8 without copies of what you contend is JDE source code being
9 copied?

10 A My recollection of that tool is that it provides, also,
11 the facility to interact with the JDE configuration management
12 and other things that are not so source code related, so my
13 answer to that would be yes, you can use OMW without touching
14 source code, if you're not modifying source code or checking
15 out or checking in or viewing.

16 Q But for any work that requires even looking at what you
17 contend is JDE source code, you cannot use the tool without
18 making copies of that, correct?

19 A Without making at least in memory copies, that would be
20 correct.

21 Q Can -- just going back -- and I'm almost done. We can
22 wrap up for what I'm assuming most people are looking forward
23 to which is a lunch break.

24 I wanted to touch up on one issue which is you
25 mentioned this concept of a Rimini engineer standing next to

1 someone who is allowed to look at the code, and I think you
2 said that's okay. Can a Rimini engineer do the same thing
3 remotely?

4 A I think that's a slipperier slope because, if they're
5 doing it remotely, at least a video portion of the code that
6 they are looking at is on their remote machine at the time
7 that they viewing it, and so there is a copy of the code in a
8 form remotely on their machine.

9 Q So they can't.

10 A I would think that would be prohibited.

11 MR. VANDEVELDE: Your Honor, I think this would
12 be a decent stopping point if you agree.

13 THE COURT: Noting that it's after noon, I do
14 agree.

15 We'll take our noon recess at this time. Let's
16 reconvene at -- I'd like to see it move along. Let's
17 reconvene at 1:20.

18 MR. VANDEVELDE: Thank you, your Honor.

19 THE COURT: Court will be in recess until 1:20.

20 (The noon recess was taken.)

21 --o0o--

1 RENO, NEVADA, WEDNESDAY, SEPTEMBER 22, 2021, 1:25 P.M.

2 ---o0o---

3
4 THE COURT: Have a seat, please.

5 The record will show we are reconvened following
6 the lunch hour.

7 And, Mr. Vandavelde, you're welcome to go
8 forward.

9 MR. VANDEVELDE: Thank you, your Honor.

10 If we could display the transcript from
11 yesterday, at page 325, starting at line 17, please.

12 BY MR. VANDEVELDE:

13 Q Ms. Frederiksen-Cross, yesterday you were asked by Oracle
14 counsel,

15 "And in connection with your review of the
16 materials in this case and Rimini II, did you come
17 across instances where Rimini support practices for
18 J.D. Edwards only involved data changes or
19 configuration changes?"

20 Do you remember that question?

21 A Yes.

22 Q And you answered,

23 "Yes, those were some of the things that I
24 saw principally -- principally in the Rimini II case
25 but some here as well."

1 What were the things you saw?

2 A My recollection was communications where the change
3 involved changing something like just providing a fresh copy
4 of a form, or just those kinds of changes that didn't involve
5 code changes.

6 Q And then you testified -- you were asked the question --
7 and this is on page 325,

8 "And do you have a percentage or an estimate
9 as to the amount of work that Rimini does to support
10 JDE that involves source code versus compilation
11 changes versus data changes?"

12 And you answered, "Only as derived from some
13 of Rimini's e-mails that communicated counts of
14 overall changes and how many related to source code
15 of that specific count. If that's representative of
16 their practice as a whole, it's roughly two percent
17 require source code changes."

18 If you could please turn to the binder that
19 contains turn tab 47, please, and take a look at it.

20 A Okay. I'm there on tab 47.

21 Q And can you also look at tab 48, please.

22 A Sure. Do you want me to take a moment and review these?

23 Q Sure.

24 A Okay, counsel.

25 Q And these documents, those are the basis for your

1 testimony regarding two percent, correct?

2 A There's another -- yeah. So out of 155 cases, only three
3 required source code changes was the number that fixed in my
4 mind when I answered the 20 -- or the two percent.

5 MR. VANDEVELDE: Your Honor, it's come to our
6 attention, and this is extremely serious and it's very
7 troubling, counsel for Oracle asked the witness to testify
8 about this. I've just confirmed the basis for her statement
9 about two percent were these exhibits.

10 Those exhibits were struck by your Honor in
11 granting our emergency motion to strike. They were included
12 in the list of 250 documents that were attached to Appendix A.
13 Oracle's counsel didn't identify them in his question. She
14 didn't identify them in her answer.

15 I had no basis to object because I didn't know
16 what documents she was talking about, and now, through the
17 back door, they are trying to create new opinions based on
18 documents that your Honor said that she could not use.

19 I would move to strike her testimony. I have
20 the portions of it. It would be 324, 18, through 326, line 5.
21 I have a copy for your Honor.

22 But the fact that they are not identifying
23 documents, and then using unidentified documents as the basis
24 to get in opinions based on things that your Honor has struck,
25 I find very troubling. And so I'd ask that you strike that

1 testimony from yesterday.

2 THE COURT: All right. Mr. Smith?

3 MR. SMITH: Yes, your Honor. I think that
4 Ms. Frederiksen-Cross also testified to her basis for this
5 understanding being part of her work involves Rimini II and,
6 in this case, an analysis of the types of changes that Rimini
7 engineers make to customers. So there was more basis to it
8 than these e-mails.

9 MR. VANDEVELDE: Your Honor, I just asked her
10 what was the basis of two percent, she said three out of 155,
11 that works out to 1.935 percent. I did the math.

12 There's no other basis she has for that number.
13 She's attempting to use documents that your Honor excluded,
14 through back door by not identifying, and we'd move to strike
15 that narrow portion of her the testimony.

16 THE COURT: That motion will be denied.

17 I did not view her testimony as attempting to
18 incorporate documents that had been stricken. I considered
19 her testimony as what appeared to be to the Court a
20 straightforward answer to a question.

21 There was no objection posed at the time on
22 behalf of Rimini or by anyone, frankly, it was just the
23 witness's testimony, which, when a question is asked, if
24 there's no objection made to the question, I assume the
25 witness is going to answer. That's exactly what happened.

1 There wasn't any reference to the documents or
2 anything to indicate it was some kind of a charade to admit
3 something that was otherwise stricken by the Court. I haven't
4 seen any sign of any type of that kind of deceit being
5 practiced in front of the Court, and I therefore deny the
6 motion.

7 MR. VANDEVELDE: If you could put up tab 48,
8 please, which is OREX Exhibit 69.

9 And I apologize, John. Could you please put up
10 her answer again on page -- the question and answer at the end
11 of 325 and the beginning of 326.

12 And actually -- yeah.

13 BY MR. VANDEVELDE:

14 Q And you were asked,

15 "And do you have a percentage or an estimate
16 as the amount of work that Rimini does to support JDE
17 that involves source code versus compilation changes
18 versus data changes?"

19 And your answer was, "Only as derived from
20 some of Rimini's e-mails."

21 So documents are referenced. Those are the
22 e-mails which you saw which is OREX Exhibits 68 and
23 69, correct?

24 A I don't know if it was this very specific e-mail. It
25 was -- the last paragraph of this is the one I was recalling

1 when I tried to calculate a percentage when I was asked that
2 question.

3 Q So you did --

4 A So it may have been this document or a document that
5 incorporated a part of this same e-mail. I'm not sure which,
6 counsel.

7 Q So as you reference an e-mail, correct, in your answer?

8 A Correct.

9 Q And you didn't identify it, correct?

10 A I wasn't asked to identify it, that is correct.

11 Q And it was on the Appendix A to your supplemental report?

12 A Honestly, counsel, I did not realize this e-mail was in
13 that appendix. I just -- when I was asked the question and
14 tried to do a calculation, these were the numbers that came to
15 my mind.

16 Q Okay. And you have no other basis for that two percent
17 figure other than this e-mail, correct?

18 A I can't think of anything else that I had counted or that
19 has quantities that I could derive that from, that's correct.

20 Q And before yesterday, never in a report, never in a
21 declaration, never in a deposition, you have never given a
22 percentage with respect to the amount of work that Rimini does
23 that requires touching, in your view, JDE source code,
24 correct?

25 A I don't recall having done so, counsel.

1 Q So the only basis was Oracle -- those Oracle Exhibits 68
2 and 69, correct?

3 A Again, specifically, this one, OREX_69, is where I
4 remembered the numbers from that was a count of the 2016 code
5 changes and the comment that out of 155, three were source
6 code changes.

7 Q And both OREX Exhibits 68 and 69 were on your Appendix A,
8 correct?

9 A Honestly, counsel, I did not memorize the list on
10 Appendix A, and as I recited that number, all I remembered is
11 having seen this e-mail.

12 So I would have to check, even now, the list on
13 Exhibit A to answer that question. If that's your
14 representation, I'm happy to take it as fact.

15 MR. VANDEVELDE: Okay. If you could please
16 display Oracle Exhibit 69, please, and if you could blow up
17 the bottom e-mail, please.

18 BY MR. VANDEVELDE:

19 Q And you've already read this to yourself?

20 A Yes, I did.

21 Q Okay. And it just -- it's from Gerard Roy. It's to Ray
22 Grigsby at Rimini Street. And the subject is Libbey Discuss
23 Procedures. Do you see that?

24 A Uh-huh.

25 Q And it's dated November 30th, 2016?

1 A I see that.

2 Q And it says,

3 "I just finished analyzing all of Libbey's
4 cases for 2016 on a case-by-case basis. There are
5 155 cases opened in 2016."

6 So I just want to pause there.

7 This e-mail is only about Libbey, correct?

8 A That is my understanding as I look at it, yes.

9 Q A single client of Rimini, correct?

10 A One of the Rimini's clients, yes.

11 Q And it's only about 2016, correct?

12 A That appears to be the basis, yes.

13 Q And only a portion of 2016, correct?

14 A Yeah. They don't say the specific dates, but I'm
15 assuming it's up until the point of the e-mail, roughly.

16 Q And it references 155 cases open. Do you see that?

17 A Yes.

18 Q Okay. Do you know whether those are break fix cases or
19 support cases -- or, sorry, cases involving tax, legal, and
20 regulatory updates?

21 A I don't specifically know, counsel.

22 Q Okay. So you didn't take that into account.

23 A I didn't, no.

24 Q Okay. And you didn't tell the Court, when you said it
25 was two percent, that it was just about Libbey, correct?

1 A No. All I remembered is seeing the number that I counted
2 stuff from 2016, out 155 cases, three required source code
3 changes.

4 Q And you didn't tell the Court that it was only for a
5 portion of 2016, correct?

6 A Up until November, correct.

7 Q And you didn't tell the Court that it was only about
8 break fix cases and didn't include tax, legal, and regulatory
9 updates.

10 A I don't know that that's true even now. Looking at this,
11 you know, this doesn't say what kind of cases they counted,
12 they just said they counted Libbey cases.

13 Q But if you included tax, legal, and regulatory updates,
14 which require changes to what you contend are source code,
15 then number would be higher, correct?

16 A It might be if they weren't already counted in this
17 number of cases, counsel.

18 Q And it's only ones at the very end, that last sentence,
19 that "required source code changes," correct?

20 A That's what it says here.

21 Q Okay. Lots of actions would trigger, in your view, what
22 you consider JDE source code to be copied, right? Like,
23 displaying the file?

24 A I'm not sure what you're asking, counsel.

25 I mean, anytime that you display the file a copy

1 would be created.

2 Q Okay.

3 A If you're asking what specific instances would trigger
4 that, of these 155 cases, I have no basis to tell you that
5 because there's no information on that in this document.

6 Q Well, you based your opinion on this document, right?

7 A The question I was asked, as best I recall it -- and you
8 have a transcript at the moment -- is what percentage required
9 code changes, and this was the number that came to mind as I
10 tried to reach for something that would allow me to answer
11 counsel's question.

12 Q And you didn't say it was about one client or that it was
13 about a portion of a year, or that it may only include certain
14 types of, you know, provision of support, correct?

15 A I didn't elaborate on that. I didn't have the document
16 in front of me to refresh my recollection, counsel.

17 All I remembered is somebody had counted 2016 cases,
18 come up with a total, and then I remembered I had done in my
19 brain the math to say, "Oh, that's a couple of percent."

20 Q And you didn't recall the document and you didn't
21 identify this e-mail, correct, on the record?

22 A No. I mean, I didn't have the document in front of me,
23 how could I?

24 Q And when it says, "Only three required source code
25 changes," let me ask again, there are lots of actions that can

1 be taken with respect to what you contend is JDE source code
2 that don't require a change, correct?

3 So, for example, looking at a file, even without
4 changing the file, that in your view would create a copy of
5 what you contend is JDE software source code, right?

6 A It would at least create an in memory copy if you did
7 that, counsel, this is correct. It would create - - I'll move
8 closer to the mic. It would create a copy of that file in
9 memory, at least, yes.

10 Q And you don't know whether those are included in these
11 numbers, correct, even looking at JDE source code, in your
12 view?

13 A Yeah. This doesn't count the number of times someone may
14 have looked at source code. It doesn't give any data about
15 that.

16 Q So you don't have an opinion, then, about the number of
17 cases that involve copying what you contend is JDE software
18 source code, correct?

19 A With respect to things that didn't require source code
20 changes to fix, that would be true.

21 Q And, again, before yesterday you had never disclosed an
22 opinion attempting to calculate the number of cases that
23 require copying of what you contend is JDE source code,
24 correct?

25 A I don't recall that I had ever been asked to try to

1 calculate that before yesterday.

2 Q So that was an undisclosed opinion before yesterday.

3 A That's the first time I recall being asked for that -- to
4 figure that out, yeah.

5 Q Let's turn to a new issue, issue number 9 which involves
6 a specific Rimini technical specification. It's Rimini's JDE
7 105328.

8 Do you remember that issue?

9 A I believe so, yes.

10 Q Okay. And the technical specification was a document
11 titled JDE Tech Doc US EF W-2c, 2018.docx.

12 Do you remember that title?

13 A I didn't memorize it letter for letter, but I remember
14 something with a title like that, yeah.

15 Q All right. And you opine that the technical
16 specification contains and refers to copies of source code
17 from Oracle source member P06767, as well as from the Oracle
18 source file R89078652. Do you remember that?

19 A That sounds correct, yes.

20 Q You didn't offer an opinion on whether those two Oracle
21 files are provided to licensees in an accessible
22 human-readable format, did you?

23 A I don't recall being asked that question, no.

24 Q They were, weren't they?

25 A Yes, they would have been.

1 Q Okay. So if the phrase in the injunction, "JDE Edwards
2 software source code" is interpreted not to include accessible
3 human-readable code provided to licensees, then paragraph 8 of
4 the injunction wouldn't apply, correct?

5 A Let me restate your question so I make sure I understand
6 it.

7 You're saying if that paragraph in the injunction
8 does not apply to the source code that Oracle ships to its JDE
9 customers, then my opinion that that code was copied
10 inappropriately would not apply.

11 Is that correct, or a fair Restatement?

12 Q I think so.

13 A I think that would be true.

14 Q Okay.

15 A Absent, obviously, evaluation against the other criteria
16 of the injunction. But taken in isolation, if that was not
17 the code that the Court was talking about, then I would want
18 to at least reevaluate what code the Court was talking about
19 when it got that instruction.

20 Q Just checking if it was admitted.

21 If we could display, it's OREX Exhibit 212. I
22 believe it was previously admitted.

23 Do you see it on the screen?

24 A Yep.

25 Q This is the first page of OREX's Exhibit 212?

1 A It says page 2 of 16 at the bottom. Is there a cover
2 page on it?

3 Q At the bottom, next to page 2 of 16, it says OREX 212?

4 A Yes. It does say OREX 212.

5 Q And your testimony yesterday was that the technical
6 specification at issue, which is on the left-hand side of
7 this, correct?

8 A That is correct, yes.

9 Q The purpose of it was to guide development for Rimini's
10 clients, where the Rimini engineer would add the Rimini
11 written code in the add boxes that we see on the left, after
12 or around the markers indicated in the red box.

13 Do you see those?

14 A Yes. As indicated, after or before -- but just to
15 clarify, this wasn't to guide development. It was to guide
16 applying the fix in an environment -- as obviously, the change
17 code had already been developed.

18 Q And you called these markers, I believe, yesterday?

19 A I may have used that term for lack of anything better.
20 Yes.

21 Q Is there another term that you would prefer?

22 A Lines of source code or indicators for the code -- again,
23 I don't think it matters what we call them. They are what
24 they are.

25 Q They're used to indicate where to insert the Rimini

1 written code, correct?

2 A That appears to be their purpose in this document, yes.

3 Q These markers, they can't be run, right?

4 A They cannot independently be executed. They have
5 ellipses in part of their line. And they also are not the
6 complete program, which is obvious from the comparisons on the
7 other side.

8 Q So they're snippets of lines, correct?

9 A That's a fair characterization, yeah, or segments --
10 segments of lines. They may be a little bit bigger than a
11 snippet, but they're not the complete line.

12 Q In the full line that they represent, that would -- that
13 full line would already be in the client's environment,
14 correct?

15 A It should be for this document to be used, yes. I mean,
16 if they were missing, then someone would be very confused when
17 they tried to use this document.

18 Q So there would be no need to copy anything in these
19 markers when applying this Rimini written code to the client's
20 environment, correct, because those full lines, which are the
21 markers, they're already in the client's environment, correct?

22 A I think what you're saying is you wouldn't cut and paste
23 these marker lines into the code because it was already there;
24 and that is correct.

25 Q Do you know how many lines, with the two files that you

1 referenced with respect to this technical specification, the
2 two Oracle files, how many lines they contained?

3 A I know that one of them was at least several thousand
4 lines long, and the other one was a little shorter. I don't
5 recall, as I sit here, the total number of lines that they
6 contained.

7 Q Are you aware that those two files, combined, are roughly
8 13,000 lines?

9 A I remember one of them was quite large, so that would not
10 totally surprise me.

11 Q And you didn't attempt to assess the quantity of snippets
12 of code in the markers with respect to the total number of
13 lines in the two Oracle files, correct?

14 A That is correct.

15 Q You didn't disclose or offer any opinions about the tech
16 spec as a whole, and whether it's substantially similar to
17 either of the two source -- the Oracle source member files,
18 correct?

19 A The tech spec is designed to cause you to modify each of
20 those source code members, but I did not attempt to assess
21 whether or not it was, in and of itself, the same as those two
22 because, again, as you've just pointed out, there was a vast
23 disparity in size so, obviously, it wasn't going to match
24 everything.

25 Q And not just you didn't see whether they were the same,

1 you didn't offer any opinions on whether the JDE tech spec is
2 substantially similar to either of the two Oracle files,
3 correct?

4 A No. My analysis was concerning the lines that it
5 contained, not the spec as a whole.

6 Q So the answer is no?

7 A That is correct.

8 Q And you didn't disclose any opinions regarding whether
9 there's -- or distinguishing between any protectible and
10 unprotectible expression in either of the two Oracle files,
11 correct?

12 A If my recollection is correct, counsel, I was asked
13 whether I thought these lines would be protectible expression
14 yesterday, and I opined that they would be. So, I believe I
15 did express an opinion about the individual lines when I was
16 asked about them.

17 Q So, but within those lines, you didn't distinguish
18 between any protectible and unprotectible expression, did you?

19 A I believe that I said I thought that the portions in the
20 lines that were displayed in the Rimini tech spec were
21 protectible expression because they were sufficient to
22 dispositively identify the corresponding underlying Oracle
23 lines. That's my recollection of my testimony.

24 Q As markers?

25 A Huh.

1 Q As markers.

2 A Well, they're being used as markers but their content is
3 what is dispositive. They have to have sufficient content to
4 allow the programmer who is going to be applying this change
5 to identify with great particularity where within the program
6 the change is going to be applied, otherwise the tech spec
7 wouldn't work.

8 Q You didn't filter out any unprotectible expression from
9 any of these markers, did you, in your analysis?

10 A I don't recall specific instance of having done so. I
11 just looked at the lines. I looked at whether they contained.
12 They appear to contain almost entirely protectible content to
13 me, and I didn't go beyond that.

14 Q But you offered no analysis whatsoever regarding
15 substantial similarity of any kind with respect to the tech
16 spec and the two Oracle files, correct?

17 A I did not compare -- I think we just covered that -- the
18 tech spec individually to either of the Oracle files as a
19 whole.

20 Q Let's turn to Issue 2, please, which relates to Matheson
21 Trucking, and the file rsi940a.sqr. Do you remember that
22 file?

23 A I believe I remember that file.

24 Q And this relates to Matheson Trucking.

25 If we could pull up tab 5, which is your opening

1 report, at paragraph 343.

2 A Tab 5. You switched books on me. Okay.

3 Q You see here you note an e-mail from Jim Bengé where he
4 says,

5 "There is absolutely no indication that
6 HCM200049 was developed or tested yet for MAT...",
7 which is a reference to Matheson Trucking, correct?

8 A Correct.

9 Q Okay. But then you note that Don Sheffield confirms that
10 development is finished. Do you see that?

11 A I see that.

12 Q Okay. So you agree that development is finished based on
13 this e-mail?

14 A It was finished somewhere, yeah.

15 Q Okay. It follows a sentence about Matheson, though,
16 right? Are you suggesting that that development is not in
17 reference to Matheson?

18 A I am suggesting that it's indeterminate what it's in
19 reference to from the summary I have here. If I look back at
20 the original document, I might be able to tell you more.

21 But my recollection is that Mr. Sheffield confirmed
22 that development was finished, but he didn't say where. He
23 just said development is finished.

24 Q Well, you've looked at other e-mails and have relied on
25 them to draw, in your opinion, inferences about what happened

1 or not happened, right?

2 And so then Benge says, "Absolutely no indication
3 that this update was developed or tested yet for MAT," and
4 then it says, Don Sheffield" -- I guess sic --

5 A Typo there, sorry. Yes.

6 Q -- "confirms that development is finished."

7 Do you see that?

8 A Yes. That was what he confirmed is the development was
9 finished.

10 Q You're not offering an opinion that development didn't
11 happen for Matheson, are you?

12 A No, just that it was finished somewhere. I mean, I don't
13 know if it was in MAT or if it was in COE, or if it was
14 somewhere else.

15 Q You have no opinion one way or the other whether
16 development was performed for Matheson Trucking, correct?

17 A Actually, as I think about this particular update, I
18 think this was one that may have been already rolled out,
19 200049, to two other clients which would suggest that this
20 development probably happened somewhere else.

21 Q But you don't know for sure.

22 A As I sit here, I'm pretty certain that HCM200049 was
23 rolled out two or three days before to two other clients.

24 Q But you noted that on -- after the e-mail from Jim, he
25 confirms that development is finished.

1 A Yes, that at least the development was finished.

2 Q All right. Let's turn to, I believe, one of the last
3 issues which is regarding -- it's issue number 8 regarding the
4 file prvtsidx.plb. Do you remember that file?

5 A Yes.

6 Q And client Australian Bureau -- Rimini client Australian
7 Bureau of Statistics uploaded the file to Rimini Salesforce
8 ticketing system, correct?

9 A That is correct, yes.

10 Q And you didn't offer any opinions that it was ever saved
11 to any further Rimini's systems, correct?

12 A I believe that's correct, yes.

13 Q Okay. And you offered no opinions that it was modified
14 or used with any other client, correct?

15 A I believe that to be correct as well.

16 MR. VANDEVELDE: If you could please display
17 OREX_226 which is previously admitted.

18 BY MR. VANDEVELDE:

19 Q This is that plb file, correct?

20 A This is the plb file. I couldn't tell you looking at
21 this without the Bates number if this was the Oracle one or
22 the Rimini I.

23 Q Well, this is admitted as Oracle Exhibit 226?

24 A Yes.

25 Q It's one you discussed yesterday.

1 A The one I discussed yesterday had Bates numbers on the
2 bottom of the pages so I could tell them apart --

3 Q Okay.

4 A -- in my binder.

5 MR. VANDEVELDE: And if you could please display
6 Oracle Exhibit 174 which was a demonstrative that Oracle's
7 counsel used.

8 BY MR. VANDEVELDE:

9 Q And you did a comparison, correct?

10 A That is correct, yes.

11 MR. VANDEVELDE: And if you can just scroll
12 through a couple of pages, John.

13 BY MR. VANDEVELDE:

14 Q Now, you offered the opinion and you showed this
15 comparison to suggest that it highly matched, right, the --
16 I'm going to call it the private side, the private side file
17 in the Australian Bureau of Statistics, what they sent, versus
18 the Oracle file?

19 A Yes, the two versions were a close match.

20 Q Okay. And it's obvious, right, because it came from
21 Australian Bureau of Statistics' environment, correct?

22 A Yeah, I mean, they provided from it the PeopleSoft --
23 from their JDE environment, and the other version was provided
24 by Oracle so I would expect that there would be a significant
25 amount of overlap.

1 Q Okay. Because the file that Australian Bureau of
2 Statistics sent came from its database on its systems uploaded
3 to Salesforce, and then you just compared it to an Oracle file
4 and said they match which is expected, correct?

5 A It was not unexpected that they would match. The degree
6 to which they would match was what I was really looking for
7 when I prepared this comparison.

8 Q You testified yesterday that there's no local hosting
9 provision in the injunction as to Oracle database, correct?

10 A I'm sorry, unpack that for me, that there is no --

11 Q Local hosting provision or prohibition as to Oracle
12 database in the injunction in your view, correct?

13 A I think what I testified to is that I had not seen a
14 license where there was one, so as far as I knew there was not
15 one. I don't know dispositively.

16 Q I'm sorry if there's confusion. I'm not talking about
17 the license at this point, I'm talking about the injunction.

18 I had asked you to identify any other local hosting
19 prohibition in the injunction other than the one relating to
20 PeopleSoft, and you spent some time looking at the injunction
21 and you couldn't find one other than the one that was
22 stricken by the Ninth Circuit, correct?

23 A That conforms to my recollection, yes.

24 Q Okay. What is your theory as to why the private side
25 file violates the injunction?

1 A Well, my understanding is that the parties have now
2 confirmed that despite its original production in the context
3 of JDE materials that this is, in fact, an Oracle database
4 file, and the Oracle database prohibition in the injunction
5 says Rimini shall not reproduce, prepare derivative works
6 from, or distribute Oracle database software.

7 So if this is -- if this file is a part of the
8 Oracle database software, it would appear to me that Rimini
9 has a reproduction on its system by way of this uploading from
10 the client.

11 Q What does it have to -- why does it matter whether it's
12 on Rimini's system?

13 You just said there's -- you acknowledge that
14 there's no local hosting prohibition in paragraph 15 in the
15 injunction relating to the database. Why did you mention that
16 it's on Rimini's systems?

17 A Because that's where the system was -- the copy of this
18 file was found.

19 Q Does it make a difference in terms of whether you think
20 it violates paragraph 15 of the injunction?

21 A Assuming for a moment that they made any modification and
22 sent it back, it would.

23 Q There's no evidence of that.

24 A The presence there -- let me ponder that just for a
25 moment.

1 This is another one of those tough cases because a
2 customer caused the copy to be placed there but the copy is on
3 Rimini's system.

4 Q I'm asking you whether it's important to whatever theory
5 you have about a violation of paragraph 15 of the injunction
6 that the file was found on Rimini's systems because its client
7 sent to it Rimini.

8 A Are you asking if it's important that it's on Rimini's
9 system or if it's important that the client sent it?

10 Q I'm just -- I'm trying to get at your -- let me ask you
11 this.

12 Before, just now, a few minutes ago, when I turned
13 to this issue, you have never disclosed any opinion in any of
14 your reports about this file as it relates specifically to
15 paragraph 15 of the injunction, have you?

16 A That's correct. Prior to just very, very recently I was
17 not aware that the parties had come to the agreement that this
18 was an Oracle file so because it had been provided to me as a
19 part of the JDE distribution, both in terms of where it was
20 found on Rimini's system and in terms of the Oracle code I was
21 provided to compare it to, I had considered this to be a JDE
22 file.

23 Q Okay. So before today, before me asking you these
24 questions today, I have never heard your theory as to why this
25 violates paragraph 15 of the junction.

1 So I'm literally just asking an open question.
2 What's your theory as to why this file violates paragraph 15
3 of the injunction?

4 A Because it's a copy of the file that is present on
5 Rimini's system, it's a reproduction, a copy of that file and
6 present on Rimini's system.

7 Q Okay. Is present on Rimini's system a necessary element
8 of why you think it's a violation of paragraph 15?

9 A If it had been present on the client's system, it would
10 not be unless Rimini had caused that copy to come into being.

11 But because this copy is on Rimini's system and
12 Rimini is now the custodian of this copy and did not prevent
13 it from being uploaded to their system and did not take any
14 apparent action to prevent from the client uploading further
15 materials, I consider it likely a violation of that provision.

16 Q Okay. So you are implying a local hosting prohibition
17 that doesn't exist in paragraph 15 of the injunction.

18 A No, I'm implying that Rimini prevented that copy from
19 coming into being on its system.

20 Q So you interpret paragraph 15 in the injunction as
21 imposing an obligation to that prevent its clients from
22 communicating with Rimini and attaching files that may contain
23 Oracle code.

24 A That's not my position entirely, counsel. I'm observing
25 that their failure to do so is what resulted in the presence

1 of this copy.

2 Q What are the necessary elements for why you contend this
3 violates paragraph 15 of the injunction, if you could list
4 them out to me. What are the essential elements?

5 A In it's most basic form, this is a copy of an Oracle file
6 which is present on -- in Rimini's custody.

7 Q So being in Rimini custody you contend is an element of
8 paragraph 15. Sorry -- yeah, paragraph 15 in the injunction.

9 A Yeah, I was following you.

10 In this instance, I believe it is, counsel, because
11 there was no action taken to prevent the occurrence of this
12 copy or to prevent further materials from being copied.

13 Q So is --

14 MR. VANDEVELDE: Can you display paragraph 15 of
15 the injunction. I think it's Tab 1.

16 BY MR. VANDEVELDE

17 Q There's no reference in paragraph 15 in the injunction to
18 anyone's systems, correct?

19 A That's correct.

20 Q So you're implying some type of element about being in
21 the custody of Rimini, correct?

22 A Rimini has the copy, and that reproduction of that file
23 is present on Rimini's system, so I will certainly give you
24 that they were not the only culpable party in that copy coming
25 in -- being created or being present on their system, but they

1 were the party who could have prevented that.

2 Q Are you implying a custody provision or local hosting
3 provision in paragraph 15 even though it doesn't have one?

4 A I'm not trying to do that, counsel. I'm trying to give
5 you my best understanding of why I find this file's presence
6 on Rimini's system to be a violation.

7 Because Rimini now possesses a copy of this file,
8 there was nothing to show that it had been quarantined or
9 sequestered in any way, there was nothing to show that Rimini
10 didn't want the information that was in this file.

11 If my memory serves me correctly, this is the e-mail
12 where Rimini asked the client to get the SQL out of this file
13 for them, so at the very least a derivative work of the file.

14 Q But you're reading a possession element in there now?

15 A Rimini asked the client to get the SQL out of this file.
16 The client responded by sending the entire file --

17 Q And you remember from yesterday the warnings to clients
18 when they used Salesforce to not upload Oracle IP or other
19 third-party IP to Salesforce, correct?

20 A Unless Rimini -- unless they had reason to believe that
21 Rimini was authorized to have that, yes.

22 Q And at the end of that warning it says all of our access
23 will be remote access, correct?

24 A But Rimini hadn't asked the individual to get the SQL out
25 of this file and put it somewhere remotely, they just said get

1 me the SQL out of the file.

2 Q And so if the client had followed the warning that Rimini
3 has, it would have put the file on its own systems. They
4 could have done that, and Rimini could have accessed it
5 remotely, correct?

6 A I don't dispute that.

7 Q Okay. Paragraph 15 reads,

8 "Rimini Street shall not reproduce, prepare
9 derivative works from, or distribute Oracle database
10 software."

11 I want to just focus on the reproduce part. So
12 if you take out the "prepare derivative works" or
13 "distribute," it says, "Rimini Street shall not reproduce
14 Oracle database software."

15 What's your understanding of that?

16 A That they should not copy.

17 Q Ever?

18 A Oracle database software. That would be my reading of
19 it, yes.

20 Q Are you aware that the Court held, quote,

21 "Given the extensive record in this case and
22 the Court's previous orders, it is clear that this
23 provision," paragraph 15, "does not prohibit all
24 copying of Oracle database"?

25 A I did not recall that specific provision, counsel.

1 Q So you didn't take into account the Court's order on this
2 paragraph in forming your opinions on this issue.

3 A I did not recall that in forming my opinions on this,
4 counsel.

5 Q You have not offered any opinions in any report or
6 declaration or deposition that Rimini has ever locally hosted
7 a database environment, correct?

8 A I think that is incorrect with respect to the Rimini
9 II --

10 Q I'm focusing on -- thank you for the correction.

11 In this proceeding, during the relevant time period
12 for this proceeding. Correct?

13 A I believe that to be correct, yes.

14 Q Okay. And you have not offered any opinion that Rimini
15 has ever used Oracle database environment on its systems
16 during the relevant time period, correct?

17 A For this litigation, correct.

18 Q And you're not offering any opinion in this proceeding in
19 the relevant time period that Rimini has ever downloaded
20 Oracle database from Oracle's technology network, correct?

21 A Again, during the time period at issue for this
22 litigation in this postinjunction hearing, correct.

23 Q Okay. Are you offering an opinion that when Rimini
24 remotely connects to its client's environment and uses that
25 client's -- and supports that client's licensed database

1 software environment in that client's environment, that Rimini
2 would violate paragraph 15 of the injunction?

3 A If their activity was solely on the client's environment,
4 given the paragraph that you discussed a moment ago that I had
5 failed to consider, I think that that would be permissible
6 under the injunction, or at least it would have to be
7 evaluated on a case-by-case basis depending on what else was
8 going on.

9 Q You had access to Rimini's DevTrack system during this
10 proceeding, discovery period?

11 A Through counsel, yes.

12 Q Okay. And that was 24/7 access, correct?

13 A I am not aware of the restrictions that were placed on
14 their access of DevTrack, whether it was 24 by 7 or some
15 shorter period. I just know that I had access to those
16 materials when I was in San Francisco at counsel's office.

17 Q And DevTrack is the system that Rimini engineers use for
18 tracking its development efforts, correct?

19 A Some of them, yes.

20 Q And then Rimini switched to a system called Jira, and you
21 had access to Rimini's Jira system on a 24/7 basis, correct?

22 A Again, I did not personally have that access, but I had
23 access to the system through counsel's offices in
24 San Francisco when I was there.

25 Q And you understand that counsel had live 24/7 access to

1 those systems?

2 A Again, I don't specifically understand that they had 24
3 by 7. I don't know what restrictions may have been placed on
4 their access. They had access while I was there in their
5 offices so I could request queries or run queries.

6 Q Okay. And in addition to DevTrack and Spira which relate
7 to development work, you also had access to Spira or Spira,
8 which is the system that Rimini engineers with respect to
9 testing efforts, correct?

10 A Again, through counsel when I was in San Francisco, and,
11 again, I don't know specifically what restrictions may have
12 been placed on their access.

13 Q Okay. But Oracle's counsel had access to Rimini's
14 DevTrack, Jira, and Spira systems is you understanding, right?

15 A I believe that is correct, yes.

16 MR. VANDEVELDE: Okay. I think I have no
17 further questions, your Honor.

18 THE COURT: Thank you.

19 Redirect examination, Mr. Smith?

20 MR. SMITH: Yes, your Honor.

21 Matt, can we display Exhibit 1342, please.

22 REDIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Ms. Frederiksen-Cross, I wanted to return to the
25 questions that were just asked of you about Oracle database

1 and the uploading of the file by the Australian Bureau of
2 Statistics to Rimini Street, and directing your attention to
3 page 8 of this exhibit.

4 Do you recall yesterday testifying that Rimini
5 likely opened the prvtsidx.plb file while trying to solve this
6 case for the Australian Bureau of Statistics?

7 A Yes, I do.

8 Q And would Rimini's opening of that prvtsidx.plb file
9 reproduce database, Oracle database?

10 A It would reproduce that database file in their
11 environment during the time it was open, yes.

12 Q Okay. Let's go back to yesterday.

13 I think -- you recall Mr. Vandavelde's questions of
14 you yesterday regarding your creation of Salesforce summaries
15 of voluminous evidence?

16 A Yes, I do.

17 Q And can you remind us why you were required to produce
18 summaries of voluminous evidence to take a look at Salesforce
19 records?

20 A We were not provided with access directly to the
21 Salesforce system using the Salesforce interface so we had no
22 access to Rimini's Salesforce system.

23 And we were not provided that extract as a .pdf or
24 any of the other more friendly extract formats that the system
25 is capable of producing. Instead, we got those -- a series of

1 rather messy and large tables that we had to reconstruct in
2 order to pull out the communications that related to certain
3 files that we had found on the system.

4 Q And based upon your knowledge of the Salesforce system,
5 could Rimini have printed out its Salesforce records in a way
6 that could be read without the creation of software?

7 A Yes.

8 Q I'd like to go back to Defense Exhibit 41 which I think
9 was shown to you in a native version yesterday. Do you
10 recognize what's being shown on the screen here?

11 A Yes. This is a part of one of the tables -- I think this
12 is the case table -- as it would look if the comma-separated
13 value file that we received was open in Microsoft Excel.

14 Q And how many such files as the one we're looking at right
15 now, Exhibit 41, did you receive?

16 A Six or seven I think.

17 Q And these six -- did you have to assimilate the six or
18 seven different files?

19 A Yes. There are fields within these that allow
20 information from the files to be combined and brought
21 together.

22 So just as a simple example, the existence of an
23 attachment, obviously the attachment is not in this file, but
24 by using the Bates reference information, one can get to the
25 attachment as it was produced in the litigation because the

1 file names were changed from the original file name to the
2 Bates number name for production.

3 So that would be an example of that kind of tying
4 that you would have.

5 Q So if Matt could scroll through this Defense Exhibit 41,
6 it starts with a column A, right? And then as you go
7 through -- I guess it ends at MN.

8 Since you know math a lot better than I do,
9 approximately how many columns are encompassed between A and
10 MN?

11 A I was afraid you were going to ask me that. I think it's
12 about 350. It would be 26 times 13 plus 13.

13 Q Okay.

14 A You're 13 times through the whole alphabet and then the
15 extra 13.

16 Q Okay. And would you have needed to select from those 300
17 plus columns of information had Rimini supplied Salesforce
18 records to you in a readable format?

19 A No, I would have used what they supplied.

20 Q Do you recall Mr. Vandavelde asking you questions about
21 column GC? And I'd like to show a demonstrative --

22 A Yeah, I think that's where the kind of generic warning
23 about don't put things on our system is.

24 Q Yeah. So let's take a look at defense demonstrative DTX
25 41A. Do you remember Mr. Vandavelde asking you questions

1 about this yesterday?

2 A Yes, I do. That was an extract from a small part of that
3 spreadsheet for this column.

4 Q And do you know when this message is provided to Rimini
5 customers?

6 A I believe that they see it on the splash screen.

7 I did some research on that last night, and as near
8 as I can tell, it appears on the splash screen when they're
9 logging into the Rimini Salesforce system.

10 Q And you indicated a moment ago that this is a generic
11 message. What did you mean by that?

12 A Well, it appears to be the same message that appears in
13 their -- some of their general documents.

14 I think counsel showed an example of this same
15 language, or something very similar, that he said was from the
16 Web page. I believe that's how you characterized it, and
17 forgive me if I'm wrong how you characterized that, counsel.

18 And, you know, what it says here is don't send this
19 information unless Rimini Street has demonstrated
20 authorization for Rimini Street to possess a copy of such
21 material, so don't give us any third-party content, code,
22 documentation, trace files, screen shots, or anything else,
23 unless Rimini has demonstrated authorization for Rimini to
24 possess a copy of such material.

25 So it's kind of a blanket warning of something not

1 to do. It's not a retroactive, oh, you shouldn't have done
2 that, please don't ever do that again, or anything that is
3 responsive to a specific incident.

4 Q And with respect to the second and third lines of that
5 message, does, in your opinion, Rimini Street demonstrate
6 authorization for Rimini Street to possess a copy of
7 copyrighted materials when they ask a customer for it?

8 A Well, as I said yesterday, I think that would be very
9 confusing to a customer, and I'm not sure how a customer would
10 resolve that because I don't know what demonstrating
11 authorization constitutes.

12 Q Do you believe that this message is effective in
13 preventing Rimini's customers from uploading Oracle
14 copyrighted material to Rimini's systems?

15 A Based on what I have seen, it appears demonstrably to be
16 ineffective because we see and have discussed over the last
17 couple of days incidents where Rimini's customers did exactly
18 that.

19 So, you know, if it prevented some uploads, I can't
20 dispute that that could have happened, but it certainly didn't
21 prevent the uploads we've been looking at.

22 Q Are you aware of more effective means by which companies
23 can prevent the uploading of materials to their systems?

24 A There are a variety --

25 MR. VANDEVELDE: Objection, your Honor, there's

1 been no disclosure whatsoever again about opinions regarding
2 this. Again, it hasn't been in reports, declarations,
3 depositions.

4 It's another example of undisclosed opinions
5 that are done on the fly in this hearing, it's a Rule 26, and
6 we request that she not be permitted to testify to new
7 opinions that never before have been made.

8 THE COURT: I think the door was opened by her
9 cross-examination. I'll allow the question.

10 THE WITNESS: I am aware that there are software
11 products that are used both to prevent leakage, if you will,
12 of sensitive documents from a company, and to block entry into
13 a company's firewall or into various systems of unwanted
14 documents.

15 You know, a common example of that would be
16 anti-virus software that repels the offensive content of the
17 firewall, if you will.

18 I am aware that Salesforce has plug-ins that
19 help control -- or that can be deployed to help control both
20 leakage of sensitive documents and control what can be
21 uploaded. So I can see a number of ways that this kind of
22 behavior could be prevented.

23 BY MR. SMITH:

24 Q You were also asked some questions yesterday about
25 whether the Oracle copyrighted materials that you found on

1 Rimini's systems were quarantined. Do you recall that?

2 A I recall that.

3 Q Even assuming Rimini did quarantine these materials in
4 some way, does that change your opinions in any way regarding
5 Rimini's compliance with the injunction?

6 A No.

7 Q Mr. Vandavelde asked you a number of hypotheticals
8 yesterday and today. Ms. Frederiksen-Cross, are any of the
9 claimed violations of the injunction at issue in this
10 proceeding hypothetical?

11 A No, they are based on the facts of the evidence I have
12 reviewed.

13 Q You were asked a series of hypothetical questions about
14 whether Rimini's reuse of knowledge is consistent with the
15 injunction. Do you recall that?

16 A I recall that.

17 Q Are any of your cross-use opinions based on Rimini's
18 reuse of knowledge?

19 A No, I don't believe so.

20 Q What are your cross-use opinions based upon?

21 A My cross-use opinions are based on the evidence I have
22 observed that Rimini has made use of one customer's
23 environment to perform development, modification,
24 troubleshooting, and testing -- and/or testing, I should say,
25 on behalf or for the benefit of another customer.

1 Q Do you recall Mr. Vandavelde asking you questions this
2 morning about your ARAXIS comparison for the pstarry file?

3 A I do.

4 Q And just so the record is clear, is the ARAXIS comparison
5 the only thing you relied upon in determining that Rimini's
6 rsc -- rspcmpay.cbl file contained protected expression from
7 Oracle's pstarry file?

8 A No. Obviously, once I had identified those similarities,
9 I had to evaluate their significance. We talked about some of
10 those I found significant during my testimony.

11 Q Okay. And then you were asked some questions this
12 morning about your work at a company called Tektronix? Do you
13 recall that?

14 A Yes.

15 Q And you were asked some questions about your work at
16 Tektronix involving J.D. Edwards World software; is that
17 right?

18 A Yes.

19 Q Do you know the contents of the license agreement between
20 Tektronix and Oracle and/or JD Edwards, whichever entity it
21 was at the time?

22 A No. These days I'm much more sensitive to legal issues
23 that I might have inquired, but back in those days I was just
24 performing a service to a client who had hired me to perform a
25 service.

1 Q Do you even know whether the license with Tektronix was
2 between Oracle or with J.D. Edwards?

3 A I don't, and I'm not even certain, because it was in the
4 context of an acquisition, that it was necessarily even
5 licensed directly to Tektronix except indirectly through that
6 acquisition.

7 Q Do you recall being asked questions about the JDE
8 technical specification which is Exhibit 80? Maybe we can
9 display that.

10 A I'm sorry, what was your question again, counsel?

11 Q Do you recall being asked questions about this document
12 by Mr. Vandavelde?

13 A Yes, I do.

14 Q And the document version control near the bottom
15 indicates that the revision date -- the last revision date was
16 August 10th of 2018. Do you see that?

17 A In the revision control section, yes.

18 Q And do you recall your review of the metadata regarding
19 this document?

20 A Somewhat dimly, but I recall reviewing the metadata, yes.

21 Q Do you recall the metadata showing that this technical
22 specification was modified after the effective date of the
23 injunction?

24 A Yes, I do.

25 MR. SMITH: I have no further questions, your

1 Honor.

2 THE COURT: All right. Any further
3 cross-examination?

4 MR. VANDEVELDE: No, your Honor, we're good.

5 THE COURT: All right. Ms. Frederiksen-Cross,
6 that will complete your testimony at this time. You may step
7 down. Thank you.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: Mr. Smith?

10 MR. SMITH: Yes. Now, your Honor, if we could
11 do one of two things.

12 I would first like to move some discovery
13 responses into evidence, and then we have some deposition
14 designations to play for your Honor.

15 THE COURT: Okay. Go ahead with -- is there any
16 objection to that approach?

17 MR. VANDEVELDE: No objection from me. I would
18 like to know what exhibits he's talking about.

19 MR. SMITH: Your Honor, we would like to move
20 into evidence Oracle Exhibits 243, 259, 269, 295, and redacted
21 copies of Oracle Exhibits 246, 274, and 260.

22 MR. VANDEVELDE: And, your Honor, if you could
23 indulge me, we just got this list. Some of them are
24 voluminous. Maybe we can reverse the order, and we'll do it
25 in the meantime, and we'll give whether we object or not, if

1 that works for your Honor.

2 THE COURT: That's acceptable to me. You need
3 an opportunity to review those.

4 MR. SMITH: And then now, your Honor, I would
5 yield the desk to Mr. Hill to discuss some deposition
6 designations that we will be playing.

7 THE COURT: All right.

8 MR. HILL: Your Honor, Oracle has nine video
9 clips that we would like to play, and we have a binder here
10 that we can offer you while you're viewing these videos.

11 THE COURT: All right.

12 MR. HILL: If I said nine, your Honor, I meant
13 seven.

14 Your Honor, the first video is of the Sebastian
15 Grady, deposition dated January 11th, 2018. It's about ten
16 minutes long, and Sebastian Grady is the president of Rimini
17 Street.

18 (Portions of the video deposition
19 testimony of Sebastian Grady played.)

20 MR. HILL: And, your Honor, Oracle moves to
21 admit OREX_347, OREX_349, and OREX_350 which were the exhibits
discussed in that video clip.

22 MR. VANDEVELDE: Could you please restate those?

23 MR. HILL: OREX_347, OREX_349, and OREX_350.

24 MR. VANDEVELDE: No objection, your Honor.

25 THE COURT: They are admitted.

1 (Plaintiff's Document Exhibits 347, 349
2 and 350 received in evidence.)

3 MR. HILL: Your Honor, the next clip we would
4 like to play is from the February 15th, 2018 deposition of
5 Mr. Seth Ravin who is the CEO and chairman of Rimini Street.

6 (Portions of the Video deposition
7 testimony of Seth Ravin played.)

8 MR. HILL: Your Honor, Oracle moves to admit
9 Oracle's 365, which is the deposition exhibit 1834 discussed
10 in that video clip.

11 MR. VANDEVELDE: No objection, your Honor.

12 THE COURT: It's admitted.

13 (Plaintiff's Document Exhibit 365
14 received in evidence.)

15 MR. HILL: And in the interest of not hiding the
16 ball, Rimini may wish to admit Exhibit 364 which is from your
17 counters.

18 MR. VANDEVELDE: Okay. Thank you. So we'll
19 move to admit Oracle Exhibit 364.

20 MR. HILL: No objection, your Honor.

21 THE COURT: All right. It is admitted.

22 (Plaintiff's Document Exhibit 364
23 received in evidence.)

24 MR. HILL: Your Honor, the next clip we would
25 like to play is from the December 1st, 2017 deposition of
26 Mr. Brian James Slepko who is the Executive Vice-President of
27 Global Service Delivery at Rimini Street, and that is
28 approximately 4 minutes long.

29 THE COURT: All right. Go ahead, please.

1 (Portions of the Video deposition
2 testimony of Brian James Slepko played.)
MR. HILL: Your Honor, Oracle moves to admit

3 Oracle's Exhibit 341 which was Deposition Exhibit 1368
4 discussed in that clip.

5 MR. VANDEVELDE: No objection, your Honor.

6 THE COURT: It is admitted.

7 (Plaintiff's Document Exhibit 341
8 received in evidence.)

MR. HILL: Your Honor, the next clip is from the
9 December 1st, 2017 deposition of Mr. Michael Jacob. He is a
10 business analyst at Rimini Street. This is approximately
11 12 minutes.

12 THE COURT: All right. Any objection?

13 MR. VANDEVELDE: No objection, your Honor.

14 THE COURT: All right. Go ahead, please.

15 (Portions of the video deposition
16 testimony of Michael Jacob was played.)

MR. HILL: Your Honor, the fifth clip we would
17 like to play is from the February 22nd, 2018 deposition of
18 Harika Mandla, who is a Senior PeopleSoft Developer at Rimini
19 Street, and this clip is approximately five minutes long.

20 THE COURT: Is there any objection to that on
21 behalf of Rimini?

22 MR. VANDEVELDE: No, your Honor.

23 THE COURT: I will allow it, but I think this is
24 an appropriate time to take our afternoon recess. We will
25 reconvene at 3:30.

1 MR. HILL: And, your Honor, so you can time
2 things, we have about 25 minutes left after that.

3 THE COURT: All right. Thank you. I appreciate
4 that.

5 (A recess was taken.)

6 THE COURT: Have a seat, please. The record
7 will show we are reconvened after the afternoon break, and,
8 let's see, what's the next deposition?

9 MR. HILL: Your Honor, the next deposition is
10 the February 22nd, 2018 deposition of Harika Mandla who is a
11 Senior PeopleSoft Developer at Rimini Street, and this clip is
12 about five minutes long.

13 (Portions of the video deposition
14 testimony of Harika Mandla was played.)

15 MR. HILL: Your Honor, the next clip we would
16 like to play is from the February 20, 2018 deposition of
17 Mr. Richard Frank who is the principal software developer at
18 Rimini Street, and this clip is approximately 14 minutes long.

19 THE COURT: All right. Any objection?

20 MR. VANDEVELDE: No objection, your Honor.

21 THE COURT: Go ahead, please.

22 (Portions of the video deposition
23 testimony of Richard Gary Frank was
24 played.)

25 MR. HILL: Your Honor, the final deposition that
Oracle would like to play is the November 18th, 2016
deposition Ms. Susan Tahtaras, and she is a Senior Director

1 for PeopleSoft development at Rimini Street, and this clip is
2 about eight minutes long.

3 THE COURT: All right. Any objection?

4 MR. VANDEVELDE: No objection.

5 THE COURT: Go ahead, please.

6 (Portions of the video deposition
7 testimony of Susan Tahtaras was played.)

8 MR. HILL: Your Honor, Oracle Exhibit 1341,
9 which is deposition Exhibit 80, was pre-admitted, but Oracle
10 moves to admit OREX_309 which is deposition Exhibit 89
11 discussed in that clip.

12 MR. VANDEVELDE: No objection, your Honor.

13 THE COURT: All right. Go ahead, please.

14 (Plaintiff's Document Exhibit 309
15 received in evidence.)

16 MR. HILL: And, your Honor, that was the last
17 clip.

18 Oracle would like to reiterate its request to
19 move into evidence the discovery responses mentioned before
20 that Rimini was considering.

21 MR. VANDEVELDE: And we have no objection to
22 those, your Honor.

23 THE COURT: All right, let's go with the
24 discovery responses.

25 MR. HILL: And I'll just read those into the
record again, your Honor, so it's clear if that's okay.

THE COURT: Yes.

1 MR. HILL: The discovery responses Oracle is
2 moving into evidence OREX_243, OREX_246, OREX_259, OREX_260,
3 OREX_269, OREX_274, and OREX_295.

4 THE COURT: All right, those are admitted.

5 (Plaintiff's Document Exhibits 243, 246,
6 259, 260, 269, 274 and 295 received in
 evidence.)

7 THE COURT: All right. Anything further?

8 MR. ISAACSON: Nothing further from Oracle, your
9 Honor.

10 THE COURT: All right, and so we switch to
11 Rimini.

12 MR. McCracken: Your Honor, this is Casey
13 McCracken. We're ready to call our first witness who will be
14 James Bengé.

15 THE COURT: All right.

16 JAMES MASON BENGÉ,
17 called as a witness on behalf of the Defendant,
was sworn and testified as follows:

18 THE CLERK: Please state your name for the
19 record.

20 THE WITNESS: James Mason Bengé.

21 THE CLERK: Please spell your first and last
22 names.

23 THE WITNESS: J-a-m-e-s, last name B-e-n-g-e.

24 THE CLERK: Thank you, sir.

25 MR. McCracken: May I proceed, your Honor?

1 THE COURT: You may. Go ahead, please.

2 MR. McCRACKEN: Good afternoon, Mr. Bengé.

3 THE WITNESS: Good afternoon.

4 DIRECT EXAMINATION

5 BY MR. McCRACKEN:

6 Q Could you please introduce yourself to the Court.

7 A Yes. My name is James Bengé, I go by Jim.

8 I'm married. My wife and I have raised three sons
9 and a daughter in the Bay Area of Northern California. We
10 just recently moved to Utah, and we're enjoying time with our
11 new granddaughter that was born just a couple of weeks ago.

12 Q Congratulations.

13 A Thanks.

14 Q Where do you work, Mr. Bengé?

15 A I work at Rimini Street.

16 Q And what is your current position at Rimini Street?

17 A I am Group Vice-President Global Product Delivery Product
18 and Tools.

19 Q When did you take on that role?

20 A That was in April of this year.

21 Q And this hearing involves events from late 2018 through
22 the end of 2019. What was your role at Rimini Street at that
23 time?

24 A I was Vice-President of PeopleSoft Development.

25 Q What was your role as Vice-President of PeopleSoft

1 Development?

2 A Managing the development of our product updates that we
3 deliver to our clients.

4 Q How long have you been with Rimini Street?

5 A Since 2008, 13 years.

6 Q Can you tell us a little bit about Rimini's business.

7 A Yes. We provide enterprise resourced planning support
8 and services to clients around the world, many Fortune 500
9 companies, hospitals, schools, local governments, and so
10 forth.

11 Q What kind of support does Rimini provide?

12 A We, number one, provide support for break fixes if a
13 client encounters any sort of bugs in the software.

14 We also provide tax, legal, and regulatory updates
15 to keep our clients in compliance with tax changes, and we
16 also just provide general support if they have any sort of
17 issues, needs, questions relating to the installation of their
18 software.

19 Q Is Rimini a service business?

20 A Yes, we are. In fact, we don't have customers per se.
21 We have clients that we really partner with and work closely
22 with them to help them get the most value out of the software
23 that they've licensed and help them extend the life of it.

24 Q How many employees did Rimini have back when you started
25 13 years ago?

1 A We were really small. We fit on one corner of one floor
2 of an office building, a small office building; less than 50
3 people probably.

4 Q And I guess 13 years ago, that would be 2008 or so?

5 A Yes.

6 Q How many employees does Rimini have today?

7 A Between 1400 and 1500.

8 Q Is Rimini now publicly traded?

9 A Yes, we are, we've been listed on the NASDAQ for a few
10 years now.

11 Q Mr. Benge, I know you're the VP of software development
12 and PeopleSoft. Do you have a software background?

13 A Yes, I have been working with software for 35 years now.

14 Q Can you tell us a little bit about your work experience
15 with software.

16 A Sure. You know, I've worked in a number of different
17 sectors, banking software, lots of experience with enterprise
18 resource planning software. I got a bachelor's degree in
19 information systems, so I've pretty much spent my whole career
20 working with software.

21 Q How did you first become interested in software?

22 A It was actually in high school, first computer
23 programming class I took, tenth grade, and I loved it.

24 Q Did you study computer programming in college?

25 A Yes, I did.

1 Q Did you get any degrees?

2 A Two, one, an associate's degree in computer science, and
3 then a four-year degree in information systems.

4 Q So turning to your role during the period at issue in
5 this case when you were -- remind me of your title?

6 A Vice-president -- well, at the time of this,
7 vice-president PeopleSoft development.

8 Q How many people were on your team at that time?

9 A Approximately 30.

10 Q That's the team that you supervised?

11 A Yes.

12 Q And during the period at issue in this hearing, did you
13 work on any product lines other than PeopleSoft?

14 A No, only PeopleSoft.

15 Q How many PeopleSoft clients did Rimini have during this
16 period, you know, end of 2018 to the end of 2019?

17 A Roughly 250.

18 Q You mentioned earlier when you were talking about the
19 support you provide, you mentioned something called break fix,
20 and I think you said updates; is that right? Did I get that
21 right?

22 A Tax, legal, and regulatory updates.

23 Q Can you just explain what's break fix.

24 A Break fix is a situation where the client might find a
25 bug in the existing software, pre-existing, that they need

1 resolved, or it could have been something that was broken as a
2 result of a recent product delivery from us.

3 Q So is that something where the client has to report an
4 issue to you and then it gets fixed?

5 A Yes.

6 Q Then tell us about -- well, you said the tax, legal, and
7 regulatory updates.

8 A This is where we're providing proactive updates to keep a
9 client in compliance with tax, legal, and regulatory changes
10 that have been legislated by various tax jurisdictions.

11 Whereas the break fix support is more reactive,
12 that's the client coming to us, you know, with a problem, and
13 we're reacting to that problem, helping, tax, legal, and
14 regulatory updates are proactive updates to keep them in
15 compliance.

16 Q Your team, or the team that you had during the period at
17 issue in this case, were they responsible for break fix or the
18 TLR updates or both?

19 A Primarily the TLR updates; break fix support only to the
20 extent that it was related to a TLR update that we had
21 released. Other types of break fix support is typically
22 handled by the support services organization.

23 Q And you touched on this a little bit, but why do clients
24 need tax, legal, and regulatory updates?

25 A Well, it's important that they have the latest product

1 updates so that they're withholding the correct amounts from
2 their employees' paychecks. They want to make sure that they
3 collect the right amount and remit the right amount.

4 Keeping them in compliance is important because in
5 certain instances there's actually fines and penalties if they
6 don't keep their product in compliance.

7 Q Does PeopleSoft have the capability to be updated in that
8 way?

9 A Indeed, because it's actually designed for that. The
10 PeopleSoft software is actually delivered with tools to help a
11 client customize the software, to be able to tailor it to meet
12 their needs. The source code is delivered to many parts of
13 the application allowing it to be customized.

14 Q Instead of saying tax, legal, and regulatory updates, are
15 you okay if I just say updates?

16 A Yes.

17 Q How many updates have you been involved in in your 13
18 years at Rimini?

19 A Many tens of thousands, considering the number of years
20 I've been here, the number of clients, and the number of
21 individual updates.

22 Q And what is your personal role in developing updates?

23 A Primarily in a supervisory capacity, but in my early
24 years with the company I was a little bit more hands-on and
25 involved in some of the development.

1 Q Do you personally implement updates?

2 A I have. I have that skill set. I am a manager that can
3 work with technical people, you know, I understand what
4 they're doing.

5 Q And I guess in your early years have you personally
6 developed updates?

7 A Yes, I have.

8 Q How many?

9 A Dozens. You know, I definitely have been involved -- and
10 certainly over the years working with the development team,
11 many more updates as I -- you know, manager on those.

12 Q What is the average level of experience of a developer on
13 your team?

14 A They're very experienced individuals, I would say average
15 15 years experience. Most of them have worked with PeopleSoft
16 or with some other ERP application in their prior employment.

17 Q Does it take any special expertise to develop PeopleSoft
18 updates?

19 A Yes.

20 Q How hard is it to develop PeopleSoft updates?

21 A It can be quite difficult at times, especially when
22 there's completely new requirements, new legislation.

23 We're building new solutions for clients, and
24 sometimes if we're just modifying something, it can be very
25 difficult to find exactly where we need to make that

1 modification, and it's, you know, thousands of lines of code
2 in the existing system.

3 Q How many PeopleSoft updates does Rimini typically release
4 in a year?

5 A In a year, individual updates, across all clients,
6 between 10 and 15,000.

7 Q And when you're giving that number, are you counting, you
8 know, multiple clients need something similar, or how are you
9 counting that number?

10 A That update as it's released to each client, so number of
11 updates times number of clients because they tend to be
12 unique.

13 Q And how often does Rimini release updates to clients? I
14 mean, is there a schedule?

15 A Yes, we release the updates in waves that we call bundles
16 or releases, and that's usually five to seven times per year.

17 Q Do clients request updates from Rimini?

18 A Not typically. Occasionally we might get a support call
19 for something that they're looking for that they haven't
20 received yet. That's reactive.

21 We don't like that, we try to avoid that. Our goal
22 is to be proactive in delivering the updates in advance of the
23 effective date before they need them.

24 Q So how does Rimini, in your words, proactively determine
25 what updates to deliver to clients?

1 A We have a completely separate group of business analysts
2 that are focused on collecting those changes, understanding
3 what's changing and keeping track of all of that, and then
4 further determining is it applicable to the various product
5 lines that we support.

6 That information is leveraged across more than just
7 PeopleSoft, so if we find that there's a California tax
8 change, it may be applicable to more than just PeopleSoft.

9 Q I think you said your business analyst team are
10 determining what's changing. Are you talking about changing
11 laws and regulations?

12 A Yes.

13 Q And then building on that, how does Rimini go from
14 whatever the business analyst team does to determining exactly
15 which updates are going to go to which clients?

16 A So there's some analysis that goes on there, number one,
17 in determining is it applicable to PeopleSoft.

18 Beyond that, what is the tax jurisdiction of the
19 legislative change, you know, let's say that it's a California
20 minimum wage increase.

21 Then they also have to look at what has the client
22 contracted with us to cover. You know, we have some clients
23 that want US federal updates plus updates for all 50 states.
24 We have others that want the federal updates and maybe only
25 the one or two states that they operate in. So it's really

1 the intersection of that information to determine which
2 clients get which updates.

3 Q Is the contract an important piece of that?

4 A Yes, it is.

5 Q Do all clients receive the same updates when Rimini
6 releases updates?

7 A No. There's a number of different factors that go into
8 that.

9 Q What are those?

10 A So, as I mentioned, you know, what are the tax
11 jurisdiction that they want updates for. But when we have an
12 update, we also have to take into consideration what
13 application release the client's on.

14 So even though an update is the same update ID, it
15 may be different per client because of customizations they
16 have or because of where they left off with Oracle support,
17 they may have different code or different releases or
18 different last tax updates.

19 Q Does that just depend on the situation?

20 A Yes, it does.

21 Q Are you familiar with the term software environment?

22 A Yes.

23 Q Can you just tell us what's a software environment.

24 A I think of it as installation of the software and all of
25 the other components that are necessary to have a functioning

1 system.

2 So, for example, with PeopleSoft, yes, you have to
3 install the PeopleSoft software, but you'd also have to
4 install database software, for example, which might be from
5 another vendor. It's everything together so that you can have
6 a functioning PeopleSoft environment.

7 Q Do your clients have PeopleSoft environments?

8 A Yes, they do.

9 Q What kind of PeopleSoft environments do they have?

10 A Typical that they would always have a production
11 environment, and they would have development and testing
12 environments as well, usually even more than that, but those
13 are the basic ones.

14 Q Can you just explain what those are. You said
15 production, development --

16 A Sure.

17 Q -- testing, can you just go through that.

18 A So production is their live system where they actually
19 conduct their day-to-day business. That's where their real
20 data is.

21 And the development system would be where they or we
22 can make modifications and unit test them and try them out
23 without having any impact on their production systems.

24 And then the testing environment would be a place
25 where you could take changes from development, apply them, and

1 test them independent of production and not being affected by
2 ongoing development.

3 Q And which of those three environments you listed, the
4 production, development, testing, does Rimini access
5 typically?

6 A We are typically just accessing development and testing
7 for product delivery.

8 Q How many files are in a PeopleSoft environment
9 approximately, if you know?

10 A Again, many tens of thousands. I would say roughly
11 50,000.

12 Q Does Rimini have any of its own PeopleSoft environments?

13 A No.

14 Q All right. I mean, you mentioned you began working for
15 Rimini in 2008. Are you familiar with Rimini's processes as
16 they have evolved from 2008 to now?

17 A Yes.

18 Q Did Rimini change its processes in or around July 2014?

19 A Yes, we did.

20 Q What were the processes prior to July 2014?

21 A At that time we did have remote clients at that time as
22 well, but we had some -- the majority of the clients hosted on
23 in-house systems. So on Rimini's servers we had client
24 software installed, and we also had certain environments that
25 were generic environments where -- for a particular

1 application release, for example, we would prepare updates.

2 Q Is there a name for those pre July 2014 processes?

3 A Process 1.0.

4 Q You mentioned the servers on your system, or environments
5 on your own system, and you said something about generic
6 environments. Can you just explain what those are.

7 A Yeah, it was a location where, for example, if we were
8 doing tax table updates, and we had a group of clients that
9 were all receiving the same tax update, they were on the same
10 release, we could use that environment to prepare that update
11 and package it and deliver it to a client.

12 Q In process 1.0 would you send Oracle software of one
13 client to other clients?

14 A I think one of the issues was the use of these generic
15 environments and the fact that things weren't siloed, that
16 even though we weren't giving clients files they weren't
17 entitled to in the sense that, you know, we're not giving them
18 any Oracle update they hadn't received from Oracle, there was
19 commingling.

20 Q What do you mean, Mr. Bengé, when you said that the
21 clients weren't getting any updates they -- I think you said
22 hadn't been entitled to?

23 A So, for example, if we had a client that came to us in
24 January, okay, on a release 8 -- .8, let's just say, and then
25 another client that came six months later who had received

1 additional updates from Oracle, we would have to ensure that
2 those clients that came earlier did not receive updates or
3 changes that were in the code from the client that came to us
4 later because the first client did not get those from Oracle
5 when they were under Oracle support.

6 Q Are Rimini's clients, Rimini's PeopleSoft clients, are
7 they licensed to PeopleSoft?

8 A Yes, they are.

9 Q So how do those processes you just described, the process
10 1.0 processes, how did those change after July 2014?

11 A They changed significantly. We moved to a model where
12 our clients host their environments that we remotely access
13 over the Internet so each client has remote connectivity set
14 up so we can get into their environments to do the development
15 and testing.

16 Think of each client as being completely siloed in
17 their own bubble, there's no cross -- no transfer of files
18 between clients. Each client has their own environments. We
19 don't bring any Oracle software back to Rimini's systems, and
20 we don't have environments on Rimini's systems.

21 Q Why did Rimini change from process 1.0 to process 2.0?

22 A It's my understanding that that was primarily driven by
23 decisions from the Court.

24 Q And what were the problems with process 1.0 that process
25 2.0 was designed to fix?

1 A Number one was us having the software installed on
2 Rimini's systems, and we addressed that issue by ensuring that
3 the client has the software installed on their computing
4 equipment and we were remotely accessing it.

5 And the other issue was the use of the generic
6 environments and any mingling of client code, and that was
7 resolved by having distinct separate client environments that
8 we remotely access. They're each in their own bubble, their
9 own silo.

10 Q Have there been any active PeopleSoft environments on
11 Rimini's systems since moving to process 2.0?

12 A No, not since end of July 2014.

13 Q If there's no environments on your systems, how does
14 Rimini access its client's environments?

15 A Everything now is remote access over the Internet using a
16 variety of remote access methods, site-to-site tunnels,
17 virtual private networks.

18 Q After moving to process 2.0, do clients ever share the
19 same environment?

20 A Never.

21 Q How much effort did it take for Rimini to transition from
22 process 1.0 to 2.0?

23 A That was a big project. There were a lot of different
24 teams involved from environments and IT and onboarding and,
25 you know, development as well.

1 We had to keep, you know, our processes going during
2 this transition so it was a difficult time. There was a lot
3 of time and effort and a lot of late nights and blood, sweat,
4 and tears that went into that. It was a lot of work.

5 Q How long did it take?

6 A Several months.

7 Q And has the remote model made your support work more
8 difficult or easier?

9 A It's a little bit more challenging but definitely doable.
10 We have definitely adapted and learned how to work efficiently
11 and effectively in that setup.

12 Q After process 2.0, or after transitioning, did Rimini
13 enact any policies with respect to having Oracle software and
14 documentation on its systems?

15 A Yes, we did.

16 Q What is that policy?

17 A Our Acceptable Use Policy, and that outlines that we
18 can't have Oracle's software, files, code, anything of that
19 nature, on Rimini's systems, that all of that type of
20 information needs to remain within the customer's
21 client-hosted systems.

22 Q We've been calling the authorized use policy the AUP.
23 Are you familiar with that acronym?

24 A Yes.

25 Q When was the last time you read the AUP?

1 A Last month. It was just -- the training for it was just
2 recently updated.

3 Q You mentioned training. Does Rimini do trainings on the
4 AUP?

5 A Yes, we now have -- for the last few years we've had
6 video-based training that has continued to be refined and
7 updated, and it's quite good now.

8 Q How often does that training occur?

9 A At least annually.

10 Q Who receives the training?

11 A Everybody in the company.

12 Q Do employees have to certify that they have accomplished
13 the training?

14 A Yeah. After you watch the video-based training course,
15 you're presented with Acceptable Use Policy, and then you have
16 to sign it, e-sign it.

17 Q Do you have to do that every year?

18 A Yes.

19 Q Are you aware of the injunction that went into effect
20 against Rimini in late 2018?

21 A I am.

22 Q Have you reviewed it?

23 A I have.

24 Q How did Rimini make its employees you aware of the
25 injunction?

1 A There was an e-mail to the entire company from our chief
2 legal counsel with the injunction attached.

3 Q And did you receive any guidance on how to comply with
4 the injunction at that time?

5 A Yes, in meetings with management and with our legal
6 department.

7 Q And what was the company's decision regarding what
8 processes, if any, had to change to comply with the
9 injunction?

10 A We largely believed that the significant effort that had
11 taken place with the move to environments 2.0 put us in
12 compliance.

13 But out of an abundance of caution there were a
14 couple of tools that we decided to disable just out of an
15 abundance of caution because we did not want to end up on the
16 wrong side of the injunction.

17 Q And what were those tools?

18 A One was the Code Analyzer which is part of the automation
19 framework, and the other was the DevReview tool.

20 Q Are those Rimini-created tools?

21 A Yes, they are.

22 Q And what's your understanding of why Rimini did not make
23 more changes in November of 2018?

24 A Again, we felt that the issues had been addressed by
25 virtue of the significant changes that we undertook in

1 conjunction with moving to environments 2.0, making all of the
2 access to environments, you know, remote over the Internet and
3 siloing each of those client environments.

4 Q And how did you make your specific PeopleSoft team aware
5 of the new policies surrounding the injunction?

6 A I sent an e-mail to the PeopleSoft Dev and QA team
7 outlining that we were going to be disabling these tools, not
8 because we felt that they were infringing but out of an
9 abundance of caution we were going to disable them, explained
10 that to the team.

11 And then we also had a follow-up meeting giving them
12 an opportunity to ask questions and we invited representatives
13 from our legal team to join us.

14 Q All right. I want to pull up an exhibit, Oracle Exhibit
15 14. This is already in evidence.

16 And, Mr. Benge, can you identify for us what this
17 document is, Oracle Exhibit 14.

18 A Yes, this is an e-mail that I sent to the team regarding
19 the PeopleSoft injunction compliance. It was sent the 13th of
20 November, 2018.

21 Q And what did you advise the PeopleSoft team in this
22 e-mail?

23 A Just, first off, kind of explaining to people, hey, the
24 injunction has been on again off again a little bit, you know,
25 so wanted to make sure that they understood very clearly that

1 the injunction was on and that, again, out of an abundance of
2 caution, there were these two tools that were going to be
3 disabled and that they were not to use them.

4 Q And you keep saying out of an abundance of caution. What
5 do you mean by that?

6 A Just because, again, we -- we did not feel that there was
7 anything at issue there, but we felt that it was something
8 that could be potentially at issue, you know, could be a
9 sensitive area that we just wanted to avoid any conflict, and
10 we wanted to make sure that we ended up on the correct side of
11 the injunction and that we were in compliance.

12 Q Did you do any follow-up with your team to make sure they
13 understood the new policies in the injunction?

14 A Yes, that was that meeting. That was the whole purpose
15 of that to make sure that everyone understood clearly.

16 MR. McCracken: Your Honor, I'm going to switch
17 to a larger topic. Do you want to keep going, or is this a
18 good place to break?

19 THE COURT: Well, I think we're moving along
20 fairly well. Is there any objection to taking a break at this
21 time by anyone?

22 MR. ISAACSON: No objection, your Honor.

23 THE COURT: All right. We'll go ahead and take
24 our evening break at this time, and we will resume tomorrow
25 morning at 9:00 a.m.

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MR. McCracken: Thank you, your Honor.

MR. ISAACSON: Thank you, your Honor.

(The evening recess was taken.)

-o0o-

I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

\s\ Margaret Griener

September 22, 2021

MARGARET GRIENER, FCRR, CRR
Official Reporter

DATE

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